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Samuel H. Shapiro

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LAWYERS AND THE LEGISLATURE

SAMUEL H. SHAPIRO*

ON NOVEMBER 8, 1966, 235 members were elected to the seventy-fifth Illinois General Assembly. Of this number, 80 were lawyers, 58 of the 177 House Members and 22 of the 58 Senators.

Before examining the role of the lawyer in and about the legislature, it may be well to briefly summarize the composition of the General Assembly and the legislative process.

Senators and Representatives generally are nominated and are elected pursuant to general provisions of the Illinois Constitution¹ and Illinois statutes.² However, all members of the General Assembly in 1966 were elected pursuant to extra-legislative reapportionment after the 74th General Assembly failed to enact reapportionment.³ Each member elected in 1966 to serve in the session beginning January 4, 1967 will receive a salary of \$9,000 per year.⁴ In addition, the Speaker of the House and the President pro tempore of the Senate yearly receive \$4,000, the Majority Leader of the House and the Minority Leader of the Senate each receive \$2,500, and the Majority and Minority Whip in each House receive \$1,500.⁵

Procedure in each house is governed by rules adopted by that house as provided in the Illinois Constitution.⁶ It is the general practice of each house to adopt the rules of the previous session as the current rules, with whatever modifications are deemed proper.⁷ To a certain

* MR. SHAPIRO is the Lieutenant Governor for the State of Illinois and is the Chairman of the National Conference of Lieutenant Governors. He received his LL.B. from the University of Illinois in 1929, and is a member of the Illinois Bar. From 1946 to 1960, he was a member of the Illinois House of Representatives and was Chairman of several committees. In 1961, while serving as Lieutenant Governor, he was appointed Chairman of the Mental Health Commission.

¹ ILL. CONST. art. IV, §§ 2, 3, 4, 7, 8. ² ILL. REV. STAT. ch. 46, §§ 8-1 to -17 (1965).

³ ILL. CONST. art. IV, § 6 (House apportioned by a commission); *People ex rel Engle v. Kerner*; 33 Ill. 2d 11, 210 N.E.2d 165 (1965) (Senate apportioned by Supreme Court).

⁴ ILL. REV. STAT. ch. 63, § 14 (1965).

⁵ *Ibid.*

⁶ ILL. CONST. art. IV, § 9.

⁷ At the time of this writing, both houses are using as temporary rules the rules of the 74th General Assembly, pending adoption of permanent rules. These temporary rules will hereafter be cited as THR (temporary house rules), TSR (temporary senate rules)

extent, the Constitution, rather than the rules, governs procedure in the General Assembly, notably in regard to requirements as to a separate vote on final passage of bills,⁸ printing of bills and amendments,⁹ style of bills,¹⁰ adjournment of both houses,¹¹ and discipline of members.¹²

A bill, of course, may originate in either the House or Senate, and once introduced follows almost identical procedure in both houses. Each house insists upon strict adherence to rules of format and style in preparation of bills. A bill introduced in the House is assigned by the Speaker to the appropriate committee.¹³ The committee holds hearings and makes its recommendation concerning the bill to the House; the committee report may take one of five forms: (1) that the bill "do pass," (2) that the bill "do not pass," (3) that the bill "do pass as amended" by the committee, (4) that the bill "do not pass as amended" by the committee, (5) a substitute bill offered by the committee.¹⁴

Assuming that the committee favorably reports the bill, it is then read a first time (by title) on the House floor, and a day later has its second reading at which stage, and only then, amendments may be offered from the floor, and committee amendments adopted or rejected.¹⁵ On the day of third reading of the bill, it is debated and a vote on final passage is taken.¹⁶ If a majority of the members elected to the House vote favorably, the bill is passed¹⁷ and sent to the Senate.

There is only one minor difference from the aforementioned procedure in the way a Senate Bill proceeds through that body. A Senate Bill, upon introduction, is immediately read and referred to the Committee on Assignment of Bills, which in turn refers it to the proper

and TJR (temporary joint rules). The Senate adopted temporary rules on Jan. 4, 1967 (Senate Resolution No. 2) and amended Rules 11, 66 and 71 on the same day (Senate Resolution No. 3) to reflect a change in the number and type of committees. Temporary rules of the House were adopted Jan. 9, 1967 (House Resolution No. 17) and amended on Jan. 9, 1967 as to Rules 14 and 15 (House Resolution No. 18) and on Jan. 17, 1967 (House Resolution No. 20) in respect to Rules 15-18, 22 and 26.

⁸ ILL. CONST. art. IV, § 12.

¹¹ ILL. CONST. art. IV, § 10.

⁹ ILL. CONST. art. IV, § 13.

¹² ILL. CONST. art. IV, § 9.

¹⁰ ILL. CONST. art. IV, §§ 11, 13.

¹³ THR 15, 74th General Assembly (1965).

¹⁴ THR 12 (i), 74th General Assembly (1965).

¹⁵ THR 29 (a); 74th General Assembly (1965); the Senate Rule regarding amendments is 16.

¹⁶ THR 32 (a), 74th General Assembly (1965).

¹⁷ ILL. CONST. art. IV, § 12; THR 32 (a).

committee.¹⁸ That committee makes its recommendation¹⁹ and the bill proceeds to the floor for amendments, if any, and the vote on final passage.

When a bill leaves the originating house and proceeds to the other body, it is read a first time before being referred to committee.²⁰ The bill then proceeds just as if it had originated in that body.

In many cases a bill is amended in the opposite body after leaving the originating house. It is then returned to the originating house for concurrence in the amendment. If concurrence is refused, the amending house may withdraw its amendment and allow the original bill to stand. If the amending house refuses to withdraw, and the originating house refuses to concur in the amendment, a conference committee can be appointed at the request of either house.²¹ If the conference committee can reach no compromise, it is discharged and, upon request, a second conference committee can be appointed.²² If that committee fails to reach agreement, the bill is lost.

The foregoing summary of the mechanics of election of legislators and the brief digest of the legislative processes is necessarily sketchy and touches only lightly on the underlying complexities of life in the legislative arena. It should also be emphasized that, while this discussion is focused on the lawyer, there is a considerable number of non-lawyers in both bodies of the legislature who perform outstandingly as leaders and members and an equal number who so perform as lobbyists and employees of the House and Senate.

Of the fifty-eight lawyer-members of the Illinois House of Representatives, a number figure prominently in the leadership of that body; the Speaker, the Majority Leader, and one of the two Majority Whips are lawyers. These men together with the Minority Leader and Minority Whip are perhaps the most important members of the House by virtue of their positions. The Speaker especially wields great power in that, among other authority, he appoints all committees, and assigns all bills to committees.²³ An examination of the list of Committee Chairmen reveals that lawyers chair six committees, and that lawyers

¹⁸ TSR 5, 74th General Assembly (1965).

¹⁹ TSR 11, 74th General Assembly (1965).

²⁰ TSR 5, 74th General Assembly (1965); THR 26 (b), 74th General Assembly (1965).

²¹ TJR 3, 74th General Assembly (1965).

²² *Ibid.*

²³ THR 15, 74th General Assembly (1965).

serve as both Chairman and Vice-Chairman of the Committees on Appropriations, Elections, Executive and Judiciary. Of the twenty-three House Committees, these are certainly among the most important. Also, lawyers serve as Vice-Chairman of three other House Committees.²⁴

In the Senate, the entire leadership of both parties is composed of lawyers. The President, the President pro tempore, the two Majority Whips, the Minority Leader and the Minority Whip all are active practitioners of the law when the legislature is not in session. In the Senate there are 19 committees and 7 sub-committees within these 19. Lawyers serve as Chairman of 9 full committees (and as both Chairman and Vice-Chairman in 5), Vice-Chairman in 3 other committees, Chairman in 5 sub-committees (in 3 of these as both Chairman and Vice-Chairman), and as Vice-Chairman of one additional sub-committee. It should be noted that all committee and sub-committee Chairmen and Vice-Chairmen (in both houses) will be members of the Majority party; therefore many lawyers who are members of the minority party, though effective legislators, will not hold such offices. However, in the Senate, the minority party has appointed a spokesman in 16 committees and all sub-committees; lawyers fill 9 of these 23 positions.

The foregoing, while merely a statistical summary of leadership positions held by lawyers, may give some indication as to their effective leadership, and a more concrete example of their positive contribution to the function of the General Assembly.

A study of legislation proposed and defeated during the seventy-fourth General Assembly also indicates that lawyer legislators were aware of problems existing which may be solved by future General Assemblies. The briefest of studies shows that lawyer-sponsored bills pertaining to the following subjects were defeated: Fair Housing Practices,²⁵ creation of a Board of Ethics,²⁶ tighter lobbying control,²⁷ creation of an Ombudsman,²⁸ forbidding lie detector tests as a condition of employment,²⁹ removal of limit of recovery in wrongful death

²⁴ These committees are County and Township Affairs, Education, and Public Welfare.

²⁵ H.B. 257, 74th General Assembly (1965).

²⁶ S.B. 34, 74th General Assembly (1965).

²⁷ S.B. 290, 74th General Assembly (1965).

²⁸ H.B. 1772, 74th General Assembly (1965).

²⁹ H.B. 247, 74th General Assembly (1965).

cases,³⁰ and court permission for wiretapping on petition of Attorney General or States Attorney.³¹

It is interesting to note in passing that of the eight present state elected officials, four have previously served in the legislature, and three of these four are lawyers. Also, parenthetically, it is probably safe to state that no contemporary legislature could ever produce as many future leaders as did the tenth General Assembly, that in which Lincoln first served. It is reported in a recent work by an Illinois State Senator that this session included among its members six future U.S. Senators, three Governors, a Cabinet member, several Generals, eight congressmen, two presidential candidates and one president.³²

Members of both houses are appointed by the respective leaders of each house to serve on various commissions created by the legislature. The Illinois Crime Investigating Commission³³ is composed of four public members and four members of each house.³⁴ All of the Senate and House members are lawyers. It is the duty of the Crime Commission to investigate organized crime in the State of Illinois and make its report to the General Assembly.

Another important permanent commission is the Legislative Audit Commission, charged with the duty of making recommendations and reports to the General Assembly concerning revenues received and expenditures made by the State of Illinois.³⁵ Five Senate and five House members serve on the Audit Commission,³⁶ and two Senators are lawyers. There is presently one vacancy in the Senate representation on this Commission and two House vacancies.

The Legislative Council consists of twenty members, ten from each house,³⁷ charged with the duty of collecting information concerning the general functioning of state government and presenting legislation designed to further the welfare of the State.³⁸ Seven of the ten Senate

³⁰ H.B. 269, 74th General Assembly (1965).

³¹ H.B. 270, 74th General Assembly (1965).

³² PAUL SIMON. LINCOLN'S PREPARATION FOR GREATNESS: THE ILLINOIS LEGISLATIVE YEARS (1965).

³³ ILL. REV. STAT. ch. 38, §§ 203-1 to -17 (1965).

³⁴ ILL. REV. STAT. ch. 38, § 203-3 (1965).

³⁵ ILL. REV. STAT. ch. 63, § 106 (1965).

³⁶ ILL. REV. STAT. ch. 63, § 105 (1965).

³⁷ ILL. REV. STAT. ch. 63, § 33 (1965).

³⁸ ILL. REV. STAT. ch. 63, § 34 (1965).

members are lawyers and three of the ten House members are also, as are the two ex officio members, the Lieutenant Governor and the Speaker.

The Illinois Budgetary Commission consists of six House and six Senate members and, ex officio, the Chairman of the Appropriation Committee in each house whose duties are to analyze all budget requests and make recommendations concerning same to the General Assembly.³⁹ Seven of the members are lawyers, five from the House and two from the Senate, with one Senate appointment open.

All fifteen members of the important Judicial Advisory Council are required by law to be attorneys.⁴⁰ Its duties are to improve the administration of justice by bringing to the attention of the General Assembly all suggestions and recommendations designed to meet that end.

The Commission to study the Processes and Operation of the Legislative Branch of Government of the State of Illinois,⁴¹ while not a permanent commission, has contributed greatly to an understanding of the problems of the General Assembly.⁴² The membership is composed of five House members, five Senate members, five public members, and the Speaker and President pro tempore, ex officio.⁴³ Two House members and five Senate members are lawyers. The Commission has made a comprehensive report, with eighty-seven recommendations for improvement of the operation of the legislative branch of government.⁴⁴

While public focus is understandably fixed upon the elected members of the General Assembly, much effort is accomplished in the halls and corridors of the Capitol Building by non-members who rarely come to the attention of the electorate. One such category is that of the lobbyist, and for the purposes of this article, the lawyer-lobbyist. Any lawyer who seeks to influence the path of legislation in the General Assembly is advised to acquaint himself with the provisions of the

³⁹ ILL. REV. STAT. ch. 127, §§ 193, 198 (1965).

⁴⁰ ILL. REV. STAT. ch. 37, § 601 (1965).

⁴¹ H.B. 163, 74th General Assembly (1965).

⁴² The Commission is generally referred to as the "Katz Commission" after the sponsor of the bill, or as "Cooga" (Commission on Operation of the General Assembly).

⁴³ H.B. 163, § 1, 74th General Assembly (1965).

⁴⁴ COMMISSION TO STUDY THE PROCESSES AND OPERATION OF THE LEGISLATIVE BRANCH OF THE STATE OF ILLINOIS, IMPROVING THE STATE LEGISLATURE (1967).

Lobbying Act.⁴⁵ A person who acts as a legislative agent without registering as provided by the Act may be fined \$200.⁴⁶ The lobbyist is required to file with the Secretary of State his name, address, and photograph, as well as the name and address of each client.⁴⁷ The registrations are compiled in loose leaf form and are a public record. A copy of the booklet is furnished to each member of the General Assembly, all elected State officials, and all members of the press. It is also important to note that the Act prohibits contingent fees for lobbyists.

The lawyer-lobbyist (and indeed most lobbyists) does not fit the stereotyped image of the cigar-smoking, party-giving, back-slapping, "hail fellow well met." The lobbyist is, in the main, concerned only with keeping track of the bills which are of interest to his clients, and being available to testify before the committees which hear "his" bills. The lawyer-lobbyist will generally be the witness who knows most about the subject matter of the Bill under discussion and he frequently provides helpful information to committees concerning legislation. He acts in the nature of an information analyst for the legislature. He may be someone who has had past contact with the legislature in some official or semi-official capacity. Occasionally the lawyer will be called upon to draft a bill for a client and to arrange to have some sympathetic legislator introduce it. Generally, however, the average lawyer who acts in a lobbying situation will be concerned mainly with following the bill's progress through the House and Senate. He makes use of the Legislative Synopsis published by the Legislative Reference Bureau, which work shows the status of each bill, and whether it is in Committee, on the floor, etc. He is also a frequent reader of the bulletin boards where notices of committee meetings are posted. The lawyer-lobbyist may also find it helpful to attend the second reading of the bill, when amendments are offered, to ascertain the reaction of the body during debate on amendments.

A particularly effective example of lobbying over the past few years is that displayed by the lawyer-lobbyists presenting the joint legislative program of the Illinois State and Chicago Bar Associations. In each session of the legislature, eighty-five to ninety percent of the joint program is enacted into law.⁴⁸

⁴⁵ ILL. REV. STAT. ch. 63, §§ 110-115 (1965).

⁴⁶ ILL. REV. STAT. ch. 63, § 113 (1965).

⁴⁷ ILL. REV. STAT. ch. 63, § 111 (1965).

⁴⁸ Interview with Joint Legislative Counsel, ISBA-CBA.

As mentioned above, occasionally an attorney is asked to draft a bill for a client. The lawyer may even prepare the final draft of the bill, carefully observing the House or Senate rules as to format and style.⁴⁹ However, by far the overwhelming majority of bills are drafted by one group of nine lawyers, acting under an Executive Secretary; this body is, of course, the Legislative Reference Bureau. Established in 1913,⁵⁰ the Bureau is a permanent agency and as such properly could have been discussed above together with the other important permanent legislative commissions. However, the Bureau is so important to the function of the General Assembly that it deserves separate treatment. The Bureau is charged by law with collecting and maintaining a library,⁵¹ classifying, indexing, digesting and printing a synopsis of all matters introduced in the General Assembly⁵² and offering to any legislator "such legal assistance and information as may be practicable in the preparation of bills, memorials, resolutions, orders and amendments. . . ."⁵³ That such assistance is readily requested is indicated by the fact that at the time of this writing,⁵⁴ on the nineteenth legislative day of the current session, over 2,200 bills have already been drafted by the overworked staff. This total does not include amendments to bills previously prepared.

Between legislative sessions the Reference Bureau is required to review the Illinois Statutes and select such subjects and chapters most in need of revision, and to recommend changes and deletions.⁵⁵

Employment opportunities for attorneys in the legislative process are seasonal and limited, with the Reference Bureau being the major source, and even there, the full staff of nine is maintained only during legislative sessions. For beginning practitioners, the Bureau offers the opportunity to learn a great amount of law in a short time, at a salary comparable to that paid an Assistant State's Attorney or Assistant United States Attorney. A larger full time staff will, of course, be maintained if the legislature, by constitutional amendment, is authorized to meet yearly.

Unlike the United States Congress, the General Assembly has no committee staff or counsel positions which traditionally attract politically oriented lawyers. However, following a recommendation of

⁴⁹ THR 23, 27, 74th General Assembly (1965). TSR 5, 74th General Assembly (1965).

⁵⁰ ILL. REV. STAT. ch. 63, §§ 25-32 (1965). ⁵³ ILL. REV. STAT. ch. 63, § 29.3 (1965).

⁵¹ ILL. REV. STAT. 63, § 29.1 (1965). ⁵⁴ Feb. 9, 1967.

⁵² ILL. REV. STAT. ch. 63, § 29.2 (1965). ⁵⁵ ILL. REV. STAT. ch. 63, § 29.4 (1965).

the Katz Commission,⁵⁶ legislation has been introduced to provide for ten full time, year round committee assistants in each House of the General Assembly.⁵⁷ The House and Senate each provide for appointment of legal advisors for the Presiding Officers and for the Majority and Minority leaders. Since these are part-time positions and do not pay sufficiently well for a lawyer to take up residence in Springfield during the session, they are usually filled by attorneys residing in the Capitol city. Also, since the positions necessarily involve a commitment to the advancement of the program of a political party, loyalty to that party is a requirement for employment.

While not necessarily designed exclusively for lawyers, the Legislative Intern program offers a chance for a law graduate to obtain first hand knowledge of the workings of the legislature while earning academic credit and a salary.⁵⁸

Interns are chosen by a sponsoring committee which is composed of the Chairman of the Legislative Counsel, two Senators, two Representatives and five academic members.⁵⁹ The committee assigns interns to work with agencies of the General Assembly or with the General Assembly itself during biannual sessions.

Aside from lobbying activities, the average lawyer will probably have little or no opportunity to practice his crafts in conjunction with the legislative process unless he is an employee of the Reference Bureau or is asked to review legislation as part of the advisory staff assisting the Governor in regard to the signing or vetoing of Bills at the end of each session. It is possible that a few lawyers with expertise in the area of Election Law will be retained to represent parties in the not infrequent election contests that arise in the General Assembly.⁶⁰

In conclusion it may be said that the lawyer-legislator makes himself felt in the legislature, perhaps, more than his numerical representation would indicate. Conversely, there is relatively little opportunity for the average lawyer to represent clients, or obtain employment, in and around the legislature, due in part to his lack of political expertise and familiarity with the legislature, but in greater part due to the relative absence of purely legal matters requiring the services of counsel.

⁵⁶ *Supra* note 44, at 56-61.

⁵⁸ ILL. REV. STAT. ch. 63, §§ 42.1-25 (1965).

⁵⁷ S.B. 181, 75th General Assembly (1965). ⁵⁹ ILL. REV. STAT. ch. 63, § 42.1 (1965).

⁶⁰ ILL. CONST. art IV, § 9 provides that the legislature is the sole judge of the qualifications of its members. ILL. REV. STAT. ch. 46, §§ 23-1 to -30 (1965) sets forth the procedure for legislative election contests.