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OFFICIAL OPINION NO. 5

June 9, 1975

Honorable B. Patrick Bauer
Indiana State Representative
1047 Van Buren
South Bend, Indiana 46601

Dear Representative Bauer:

This is in response to your request for my opinions concerning these questions: (1) whether the office of Speaker of the Indiana House of Representatives is filled for a certain term or, whether it is subject to re-election during a legislative term; (2) whether the Speaker of the Indiana House of Representatives may refuse to allow a member of the House of Representatives to speak while the House is in session; and (3) whether a member of the Indiana House of Representatives may accept non-campaign gifts having a value of over \$100.00.

ANALYSIS

Ind. Const. Art. 4, Section 9 authorizes the General Assembly to fix the length and frequency of its own sessions. Presumably pursuant to this authorization, the 1971 General Assembly enacted the Legislative Sessions and Procedures Law, *Ind. Code* Sections 2-2.1-1-1 to 2-2.1-1-11. Section 2-2.1-1-2 provides, in part, the following:

“The first regular session of each term of the general assembly shall convene on the third Tuesday after the first Monday of November of each even numbered year to organize itself and to *elect its officers* and receive the oath of office * * *.” (Emphasis added).

Section 2-2.1-1-3 provides, in part, the following:

“The second regular session of each term of the general assembly shall convene on the third Tuesday after the first Monday of November of each odd numbered year for the purpose of establishing the first day of the second session.”

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The omission in Section 2-2.1-1-3 of any mention of electing officers suggests that the legislative intent is that only at the beginning of the first regular session of the two-year term of the General Assembly is an election of such officers held. That conclusion is stated expressly in Section 2-2.1-1-8(d):

“The officers elected at the organizational meeting shall serve for that entire term of the general assembly, unless removed, suspended, or unable to serve.”

With respect to your second question, Code Section 2-2.1-1-7 authorizes the Speaker of the House to “conduct the further business of the house.” Pursuant to *Ind. Const.* Art. 4, Section 10 and *Ind. Code* Section 2-2.1-1-8(a), (b), and (c), each house determines its own rules for conducting business. So each house can also change its rules. In any event, under the constitutional doctrine of separation of power, it is not within the province of the judicial or executive branches to interfere with the *internal* workings of the legislative branch.

In framing your final question, you refer to the 1974 legislative ethics law, *Ind. Code* Sections 2-2.1-3-1 to 2-2.1-3-12. Section 2-2.1-3-2 thereof requires each member of the General Assembly to file annually with the Clerk or Secretary of his respective house a statement of economic interests. In that disclosure statement, he must include, *inter alia*, the name of any person from whom he received any gift of cash or any gift other than cash which has a fair market value of over \$100.00. Since Section 2-2.1-3-3 imposes a similar filing requirement for listing campaign contributions, Section 2-2.1-3-2 makes sense only if it is construed to cover non-campaign gifts.

Of course, your last specific question was directed at the acceptance of non-campaign gifts rather than the reporting of those gifts. Neither the ethics law nor any other state law prohibits accepting a *bona fide* gift. But Sections 2-2.1-3-8, 2-2.1-3-9, and 2-2.1-3-10 do prohibit accepting certain payments which might appear to be “gifts” but which, given the circumstances defined therein, actually are improper payments for legislative influence. But, again, it is the legisla-

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ture itself which can judge whether such ethically improper payments have, in fact, occurred. Section 2-2.1-3-12 provides the following:

“Wilful failure to file a required statement by the deadline prescribed in this chapter or knowingly filing a false statement or *violation of sections 8, 9, or 10*, of this chapter shall constitute disorderly behavior and may be punished by the house or senate as provided in section 14 of article 4 of the Constitution of Indiana.” (Emphasis added).

Ind. Const. Article 4, Section 14, cited above, provides the following:

“Either House may punish its members for disorderly behavior, and may, with the concurrence of two-thirds, expel a member; but not a second time for the same cause.”

It is important to note, however, that the Indiana General Assembly has also imposed criminal sanctions on certain conduct by its own members. In fact, one section of the ethics law, namely Section 2-2.1-3-11, makes it a crime for a member to accept compensation “to influence his action, vote, opinion or judgment on any legislative matter.” In addition, the state bribery law, *Ind. Code* Section 35-1-90-4, which is applicable to all public officials, similarly prohibits a member of the General Assembly from soliciting or accepting anything of value “to influence him with respect to his official duty, or employment, or to influence his action, vote, opinion or judgment in any matter pending or that might legally come before him.” Additionally, all state officers “are liable to impeachment for any misdemeanor in office.” See *Ind. Code* Section 5-8-1-1.

CONCLUSION

It is my official opinion, therefore, that the questions you pose concern matters which are primarily within the province of the legislative branch of government; that is, the election of the Speaker of the House and the Speaker’s parliamentary

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prerogatives and the ethical behavior of the Speaker of the House; but if you have any verifiable evidence of criminal law violations in this area or any other, you, of course, have a duty to turn such evidence over to the local prosecuting attorney.