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FILE NO. S-459

**CONSTITUTION:
Journal of the House and Senate
Contents - Shortening**

Honorable G. William Horsley
Chairman
Legislative Reference Bureau
State House
Springfield, Illinois 62706

Dear Senator Horsley:

I have your letter wherein you put forth two proposals designed to shorten the journal of the House and Senate.

First, you propose to combine references to all bills which on the same date were on first reading and reference. Similar groupings would be made in the journal with respect to those considered on second reading.

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Secondly, you propose that there be eliminated in the journal the specific listing of the name of each individual voting with the prevailing side. Instead the journal would recite that all duly elected members voted for a particular bill except members specifically named who voted contrariwise or members specifically named who were absent.

You ask whether the shortened procedures would be constitutional.

Sections 7(b) and 8(c) of Article IV are the provisions of the Illinois Constitution of 1970 pertinent to the proposals made above. Section 7(b) of Article IV of the Illinois Constitution of 1970 reads as follows:

"(b) Each house shall keep a journal of its proceedings and a transcript of its debates. The journal shall be published and the transcript shall be available to the public."

Section 8(c) of Article IV of the Illinois Constitution of 1970 reads as follows:

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"(c) No bill shall become a law without the concurrence of a majority of the members elected to each house. Final passage of a bill shall be by record vote. In the Senate at the request of two members, and in the House at the request of five members, a record vote may be taken on any other occasion. A record vote is a vote by yeas and nays entered on the journal."

A review of the proceedings and debates of the 6th Illinois Constitutional Convention discloses that those provisions of section 7(b) and 8(c) pertaining to keeping and publication of a journal in each House and the taking of a record vote by yeas and nays "entered on the journal" were carried forward from the 1870 Constitution without change. Neither the old or new constitutional provisions relating to the journals prescribed any standards governing the scope or specificity of detail required of a legislative journal. The important thing is that a journal be adequate to establish compliance with constitutional requirements governing passage of bills. Form and content of the journal are otherwise matters of legislative discretion.

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So long as the shortened journal does set forth (1) the history of introduction and readings of bills, (2) a record vote of "yea and nay votes" on roll calls and, (3) otherwise significant legislative acts transpiring in a plenary session, there would appear to be full compliance with the Constitution.

With reference to your second proposal to specifically name only those voting in the minority or those not voting at all, the case law reveals that the courts demand that a roll call be taken so that the voting record of the members of legislative bodies can be discerned by the public. The case law deals with that part of section 3-11-17 of the Illinois Municipal Code (Ill. Rev. Stat., 1971, ch. 24, par. 3-11-17) which reads as follows:

" * * * The yeas and nays shall be taken upon the question of the passage of the designated ordinances, resolutions, or motions and recorded in the journal of the city council.
* * *"

In Village of Bourbonnais v. Herbert, 86 Ill. App. 2d 367; 229 N.E. 2d 574, the Appellate Court of Illinois,

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Third District, passed on the adequacies of a journal of a village council to determine whether action taken at a meeting thereof complied with said section 3-11-17 and section 1-1-2(8). (Ill. Rev. Stat., 1971, ch. 24, par. 3-11-17 and 1-1-2(8)). The journal provision there in question read in part as follows:

"* * * After considering the provision t/s [trustee] McClain moved to accept said zoning ordinance, t/s Hudson 2d motion. Motion passed-5 ayes-1 nay (t/s Cryer voting negative)."

Village of Bourbonnais
v. Herbert, 86 Ill. App.
2d 367 at 372-373.

The Appellate Court, relying principally on People ex rel. Anderson v. Chicago and Northwestern Railway Company, 396 Ill. 466, 71 N.E. 2d 701, held that the cases construing the statute required nothing short of a record showing a roll call with each individual vote. In addition, the Appellate Court pointed out that the Bourbonnais Village journal entry did not necessarily disclose who was present at the time the

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vote was taken, nor specifically that the 5 votes recorded and the minutes were votes of village trustees. Of course in this respect, the case differs from your proposal which would expressly recite the casting of votes of all elected members excepting those specifically named.

A recent interpretation of the same provisions of the Illinois Municipal Code (Ill. Rev. Stat., 1971, ch. 24, par. 3-11-17) is found in the City of Lewistown v. Braden, 9 Ill. 2d 620, wherein the Supreme Court sustained as an adequate compliance journal entries reading as follows:

"Alderman Shaw made a motion, seconded by Alderman Weirauch that the Ordinance be finally passed and adopted as introduced and read. Upon roll call all voted 'Aye.' Motion carried. The city clerk testified that the five aldermen present at the meeting, whom he named, voted 'Aye' and that no 'Nay' votes were cast. * * *"

In distinguishing People ex rel. Anderson v. Chicago and North Western Railway Company, 396 Ill. 466, Mr. Justice Schaefer said:

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"* * * In People ex rel. Anderson v. Chicago and North Western Railway Co. 396 Ill. 466, relied upon by defendants, the ordinance in controversy was defective because the record did not show that there had been a roll call vote. As the court pointed out, the record in that case was consistent with 'a viva voce vote which the statute does not permit, and so does not show a roll call as is required.' Here the record shows that there was a roll call."

Any doubt as to the legal adequacy of your proposed treatment of roll calls would certainly be eliminated if the names of all duly elected members of the Senate or House were listed once in each journal thus providing any interested person ready means of determining the identity of all elected members for purposes of interpreting the shortened entries of the journal on specific roll calls.

For the reasons stated above, it is my considered opinion that the procedures you have proposed would be constitutional if adopted by the rules of the respective Houses.

Very truly yours,

A T T O R N E Y G E N E R A L