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OPINION
OF
Attorney General
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No. 87-19

By: Scott D. Spencer
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To: Jack M. Morgan
State Senator
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QUESTIONS PRESENTED

1. In view of the provisions of section 2-5-1 NMSA Comp. what members of the Legislative Finance Committee have a right to cast a vote on issues considered by the Committee which require a vote by the membership of the Committee?
2. Do advisory members of the Committee have a right to vote, either to adopt or reject an issue, under the terms of the above cited statute?
3. In view of the provisions of section 2-5-1 NMSA 1978 Comp. does the appointing authority, whether acting separately or jointly, have the power to create advisory members and invest them with voting privileges?

CONCLUSION:

1. Only the eight members appointed pursuant to Section 2-5-1 NMSA 1978 have a right to cast votes on issues that the Committee considers.
2. No.

3. No.

ANALYSIS:

Section 2-5-1 NMSA 1978 provides in part as follows:

There is hereby created a continuing joint interim committee of the legislature to be designated the "legislative finance committee". The committee shall be composed of eight members, four members from the house of representatives and four members from the senate....

Members shall be appointed for terms of two years and shall serve from the time of their appointment until the end of the next session of the legislature. The term of any member shall terminate when such member ceases be a member of the legislature....

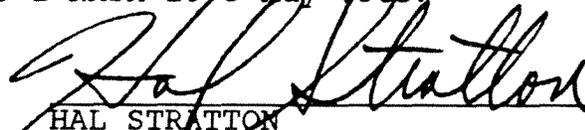
No action shall be taken by the committee if a majority of the total membership from either house on the committee rejects such action.

It is clear that the legislative finance committee "shall be composed of eight members". There are no provisions for advisory members. There are also no provisions that would allow the appointment of advisory members who have the right to vote. The Legislative Finance Committee was enacted by, is controlled by, and is a service agency of the legislature. See Legislative Research Com'n v. Brown, 664 S.W.2d 907 (Ky. 1984).

It is our understanding that a majority of both houses of the legislature has not taken any formal action to change the membership of the Legislative Finance Committee. We are aware of the doctrine of law which provides that in some cases the legislature can act contrary to statutes which purport to regulate procedure. See Outagamie County v. Smith, 155 N.W.2d 639 (Wis. 1968). We are also aware of the doctrine of law that the legislature may not estop itself from changing its rules of procedure through the adoption of a statute or rule prohibiting such a change. See People's Advocate Inc. v. Superior Court, 181 Cal. App.3d 316, 226 Cal. Rptr. 640 (1986). It is our opinion, however, that, without action of the entire legislature the membership and voting rights of this statutorily created committee cannot be changed. We could not find any authority allowing less than a majority of both houses of the legislature to change its rules of procedure whether

set forth in rule or statute. See Coggin v. Davey, 211 S.E.2d 708 (GA. 1975). Furthermore, legislative enactments creating legislative advisory committees have been upheld, as long as legislative power is not delegated to the committee or the committee's authority does not unconstitutionally encroach upon the executive. State ex rel. Judge v. Legislative Finance Committee, 543 P.2d 1317 (Mont. 1975). We are not addressing those issues in this opinion.

It is therefore our opinion that the appointing authorities have no authority under state law to enlarge the membership of the committee beyond eight members. They also have no authority to appoint advisory members and confer upon them the power to vote on issues before the committee. Only those eight members appointed pursuant to section 2-5-1 NMSA 1978 may vote.



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