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LEGAL OPINION

TO: President Kevin Grantham
FROM: Office of Legislative Legal Services
DATE: November 23, 2018
SUBJECT: Authority to Remove the Secretary of the Senate¹

Legal Question

The Senate rules state that the Secretary of the Senate is elected by and holds office at the pleasure of the Senate. Colorado case law supports the proposition that the authority to appoint also carries the authority to remove. Does either the current Senate President or the Senate President-designate have the authority to remove the Secretary of the Senate?

Short Answer

No, neither the current Senate President nor the Senate President-designate has such authority. Since the Secretary of the Senate is elected by the Senate and serves at the

¹This legal memorandum results from a request made to the Office of Legislative Legal Services (OLLS), a staff agency of the general assembly. OLLS legal memoranda do not represent an official legal position of the general assembly or the State of Colorado and do not bind the members of the general assembly. They are intended for use in the legislative process and as information to assist the members in the performance of their legislative duties.

pleasure of the Senate, the Senate has the exclusive authority to remove the Secretary of Senate, which requires a vote of a majority of its members.

Discussion

1. The Secretary of the Senate Serves as the Chief Legislative Officer of the Senate and is Responsible for Duties that Continue Through the Legislative Interim.

The chief legislative officer of the Senate is the Secretary of the Senate (Secretary). The Secretary has many duties, including administrative duties relating to staff and budgetary matters, as well as procedural matters. As the chief legislative officer, the Secretary manages the session proceedings and record-keeping of the Senate.² The Secretary is responsible for publishing the daily calendars³ and journals⁴ of the Senate. The Secretary also serves as the parliamentarian of the Senate.⁵ Unless otherwise directed by the President, the Secretary has general supervision over the employees of the Senate.⁶ It has also been the long-standing custom and practice of the Senate that the Secretary assists in developing and managing the annual budget of the Senate.

2. The Statutes and the Rules of the Senate State that the Secretary of the Senate is Elected by and Serves at the Pleasure of the Senate, Not an Officer of the Senate.

Both houses of the General Assembly have the constitutional authority to choose their own officers.⁷ In furtherance of this constitutional authority, section 2-2-306, C.R.S., provides that unless specified otherwise in part 3 of article 2 of title 2, C.R.S., all officers and employees “shall be selected by the house employing them”. The statutes do not include any other provisions concerning the selection of the officers and employees of the House and the Senate.

² Rule 13 (a) of the Rules of the Senate.

³ Rule 13 (a)(6) and Rule 15 (a) of the Rules of the Senate.

⁴ Rule 13 (a)(6) and Rule 14 (a) of the Rules of the Senate.

⁵ Rule 40 (b) of the Rules of the Senate.

⁶ Rule 13 (a)(5) of the Rules of the Senate.

⁷ Colo. Const. Article V, §10.

In exercising the constitutional authority of the Senate, Rule 13 of the Rules of the Senate provides for the selection of the Secretary. In relevant part, Senate Rule 13 (a) provides that:

A secretary of the Senate shall be elected at the commencement of each session, and at such other times as may be necessary, to hold office at the pleasure of the Senate.

To be elected as the Secretary of the Senate means that the person has been chosen as an officer of the Senate and such election has the same effect as being appointed by the Senate. However, for the Senate to appoint a Secretary, the Senate must take formal action as the body. This means the Senate must vote to show approval of the appointment by electing the Secretary by a vote of majority of the members of the Senate.⁸ This vote occurs when, on the first day of the legislative session, a motion is made by the Senate Majority Leader that a named individual serve as the Secretary during that legislative session.⁹ In addition, at the beginning of each legislative session the Senate adopts a Senate Resolution that appoints all of the employees of the Senate, including the Secretary.¹⁰

The Secretary is elected to serve for the regular legislative session in which the election occurs.¹¹ In addition, at the beginning of each regular legislative session and consistent with section 2-2-308 (1), C.R.S., the Senate and the House approve a joint resolution setting the compensation of legislative employees that includes a provision that the Secretary of the Senate and the Chief Clerk of the House shall remain in their positions after adjournment of the General Assembly *sine die* until the convening of the next regular legislative session the following January.¹² To have the Secretary serve until the next regular legislative session is consistent with the principle that the Secretary's authority expires with the authority from whom the Secretary's authority is derived.¹³

⁸ Since Rule 13 of the Rules of the Senate does not specify the manner of voting when electing the Secretary, Rule 17 (a) of the Rules of the Senate controls and requires that the vote be taken viva voce.

⁹ See, e.g., Senate Journal, January 10, 2018, p. 1; Senate Journal, January 12, 2011, p. 13; and Senate Journal, January 12, 2005, p. 13

¹⁰ See, e.g., Senate Resolution 18-001.

¹¹ *Id.*

¹² See, e.g., subsection (2) of Senate Joint Resolution 18-001.

¹³ Mason's Manual of Legislative Procedures (2010 ed.), Sec. 586, Par. 3.

There are no provisions in the Rules of the Senate or in the statutes, nor is there any provision in the Senate resolution by which the Secretary of the Senate is appointed or in the Joint Resolution by which the Secretary's employment is continued until the next legislative session, for removal of the Secretary by the President or by any other individual.

3. Colorado Case Law Holds that the Power to Appoint an Officer Carries With It the Power to Remove an Officer.

Although Rule 13 (a) of the Senate Rules provides for the election of the Secretary, the rule does not expressly specify the manner in which the Secretary may be removed. However, the rule does specify that the Secretary serves "at the pleasure of the Senate."

There is no case law directly on point that addresses the procedure for removing a Secretary of the Senate. However, in an analogous case, the Colorado Supreme Court, in *In re Speakership of House of Representatives*,¹⁴ addressed the question of whether the House of Representatives could remove the Speaker of the House subsequent to electing him. At issue was the same constitutional provision previously discussed that authorizes each house of the General Assembly to choose its officers. Section 10 of Article V of the Colorado Constitution requires that, at the beginning of the first regular legislative session after the general election, the Senate elect one of its members as President and the House elect one of its members as Speaker. Both houses have adopted rules requiring the election of their presiding officers at the beginning of each regular session convening after a general election.¹⁵ However, neither of these legislative rules specifies that the elected presiding officer serves at the pleasure of the body.

In concluding that a majority of the members of the House of Representatives could by vote remove the Speaker who was previously elected by the body, the Colorado Supreme Court found that authority to remove the Speaker is based upon common parliamentary law unless such power is limited by constitutional or other authority.¹⁶ Since the mode of electing the Speaker is not specified in the constitution, the manner of election and tenure is left "to the will of the body from which he derives his office."¹⁷

¹⁴ 15 Colo. 520, 25 P. 707 (1890).

¹⁵ See Rule 12 (b) of the Rules of the Senate; Rule 2 (1) of the Rules of the House of Representatives.

¹⁶ *In re Speakership of House of Representatives*, 15 Colo. at 524, 25 P. at 708.

¹⁷ *Id.* at 527, 709.

In holding that because the Speaker derives his office by election of the House of Representatives and holds the office at the pleasure of the House, the Speaker may be removed by the House, the Colorado Supreme Court stated:

As a purely legal proposition, the house of representatives has the power by the vote of ‘a majority of the whole number of members elected,’ to remove its speaker from office and to elect another in his stead.¹⁸

Thus, the power to remove is inherent in the power to elect. The Court’s decision supports the proposition that the Secretary of the Senate, who is elected by a majority of the members of the Senate and who serves at the pleasure of the Senate, is subject to removal only by a vote of a majority of the members of the Senate. Furthermore, the constitutional authority to choose officers is a plenary and exclusive grant to each house of the General Assembly, which is to be exercised by a majority of its members.¹⁹ The power is granted to a house and not to the officers of the house. As a result, the powers of a house are not the powers of the members individually but of the entire house.

There is no express or implied authority granted to the President by the state constitution, state statute, or legislative rule to appoint or remove the Secretary, except in one limited circumstance when the President may appoint a new acting Secretary of the Senate.²⁰ While the Senate President, on behalf of the Senate, may direct the actions of the Secretary,²¹ this authority does not allow the President to remove the Secretary in direct contravention of Rule 13 (1) of the Rules of the Senate. The lack of express authority for the Senate President to remove the Secretary further supports the conclusion that only the Senate, acting as the body, may remove the Secretary.

Since the President does not have the authority to remove the Secretary and appoint a new one, there is no authority on which the President-designate may rely to remove a

¹⁸ *Id.* at 534, 707.

¹⁹ In reaching its decision, the Colorado Supreme Court discussed the plenary and exclusive power of each house to “judge the election and qualifications of its members”, which is also granted by Section 10 of Article V of the Colorado Constitution. See *id.* at 530, 710.

²⁰ The only situation in which the President is expressly authorized to appoint a new acting Secretary is in the event the Secretary dies, resigns, develops a disability, or is absent from the state and the Assistant Secretary of the Senate is unable to serve as the acting Secretary. See Senate Rule 13 (c).

²¹ Mason’s Manual of Legislative Procedures (2010 ed.), Sec. 587, Par. 1.

Secretary and appoint a new one. The President-designate is the Senator selected by his respective political party caucus as the President of the Senate for the next General Assembly. The President-designate has no express authority granted to him as a result of his selection by his party caucus other than to participate in a temporary Executive Committee of the Legislative Council between the 2018 general election and the convening of the Seventy-second General Assembly with other legislators who are selected by their respective political party caucuses as the Speaker of the House of Representatives and the Majority and Minority Leaders of the Senate and the House of Representatives for the next General Assembly.²² Since each house of the General Assembly has the exclusive authority to choose its officers, the Executive Committee also does not have any role in the selection of the Secretary of the Senate or the Chief Clerk of the House of Representatives.

Conclusion

Rule 13 (1) of the Rules of the Senate gives the exclusive authority to elect and to remove the Secretary to the Senate as the body. Removal of the Secretary may be accomplished only by a vote of a majority of the members of the Senate. Thus, no Senate President or President-designate has the authority to remove the Secretary and appoint a new one.

²² See section 2-3-301 (1.5)(a), C.R.S.