


Office of
The County Attorney
Montgomery County, Maryland

Opinion No.: 90.008

Date: November 20, 1990

TO: Arthur W. Spengler
Council Staff Director

FROM: Clyde H. Sorrell
County Attorney 

SUBJECT: Enactment of More Than One Bill By Legislative Consent
Calendar Requires Amendments to Both the County Code
and the Rules of Procedure of County Council.

County Attorney Opinion No. 90.001 responded to the following inquiry: Can the County Council amend its Rules of Procedure to allow the Council to adopt by a single vote more than one bill authorizing a special capital improvement project under Section 20-1.¹ In that Opinion, we noted that: (1) Section 302 of the Charter provided that certain capital improvement projects must be individually authorized by law; (2) Section 20-1(c)1 provides that the County Executive must submit proposed legislation for each special capital improvement project; and (3) Section 2-82(a) requires that a vote on adopting a bill must be on a roll call by yeas and nays. Opinion 90.001 concluded that the Council Rules of Procedure could not be amended to provide for the enactment of more than one bill by a single vote because such an amendment would be inconsistent with Section 2-82 and Section 302 of the Charter.

You have asked us to reconsider Opinion 90.001 in light of an Opinion dated May 18, 1983, from County Attorney Paul A. McGuckian. (A copy is attached.) In that Opinion, Mr. McGuckian indicates that the use of a legislative consent calendar that allows a single vote on more than one bill would

¹Unless otherwise stated, section references are to the Montgomery County Code, 1984.

be legal if authorized by the County Code and the Council's Rules of Procedure.

The Montgomery County Code does not expressly authorize the use of a legislative consent calendar.² To the contrary, Section 2-82(a) provides that a, "Vote on final passage of a bill shall be on roll call by yeas and nays." This clearly implies that the Council may not use a single vote to pass or defeat more than one bill at a time. Rule 6(h) of the Council's Rules of Procedure likewise requires a separate roll call vote on each bill.

Mr. McGuckian's Opinion notes that the general rule is that each piece of legislation must be acted upon by a separate vote. Mr. McGuckian points out that this rule exists to provide a safeguard against the practice of logrolling. Consistent with Opinion 90.001, Mr. McGuckian points out that Section 2-82 appears to require a separate vote on each piece of legislation. Finally, Mr. McGuckian determines that the Council could implement a legislative consent calendar by amending the County Code and the Council's Rules of Procedure, but adds the following cautionary thought:

"A critical element of any legislative consent calendar procedure is the legal ability of any councilmember to compel or demand that one or more of the bills on a legislative consent calendar be considered and voted upon separately. This further insulates the use of a legislative consent calendar from the practice of logrolling."

We believe that Mr. McGuckian's Opinion is sound. Unlike Mr. McGuckian's Opinion, Opinion No. 90.001 was written in the specific context of using a single vote to take action on two or more bills authorizing special capital improvement

²It is relevant to note in this regard that the Maryland General Assembly is specifically authorized by the State Constitution to utilize a legislative consent calendar. Md. Const., Article III, Section 27.

projects. While a properly worded amendment of Section 2-82 would remove the principal roadblock to the use of a legislative consent calendar for most legislation, we must still examine whether Section 302 of the Charter and Section 20-1 prevent the use of a legislative consent calendar for legislation authorizing special capital improvement projects.

In 1978 the County Charter was amended to require the Council to adopt a law requiring certain capital improvement projects to be individually authorized by law. Section 20-1, which implements Charter Section 302, notes that the purpose of this Charter amendment was to afford citizens an opportunity to petition important capital improvement projects to referendum. The 1980 Report of the Charter Review Commission noted that while the voters had earlier rejected certain proposed Charter amendments which would have required referenda to approve funding for all capital projects, there was a great deal of support for more control of capital project funding by the voters. The 1978 amendment provided for this control by requiring that certain capital improvement projects must be individually authorized by law to allow the voters an opportunity to petition to referendum an individual project without jeopardizing the other projects in the CIP.

If each capital improvement project is authorized in a separate bill, the purpose of Section 302 of the Charter and Section 20-1 can be fulfilled. The adoption of separate bills by a single vote through a legislative consent calendar process would not deprive the voters of the right to petition to referendum any particular project. Therefore, the use of a legislative consent calendar is consistent with the purpose and language of Section 302 of the Charter and Section 20-1; however, such legislative consent calendar must be specifically authorized by law.

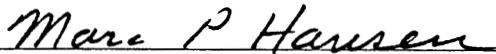
Accordingly, we conclude:

1. The Council may by legislation, coupled with appropriate amendments to its Rules of Procedure, provide for a legislative consent calendar; the consent calendar may include bills authorizing special capital improvement projects under Section 20-1. The legislation must amend Section 2-82 to authorize expressly the use of a legislative consent calendar.

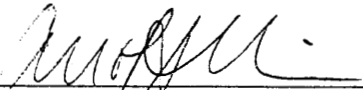
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2. Each special capital improvement project must be authorized in a separate bill.

3. An essential element of the legislative consent calendar must be the ability of each councilmember to require the withdrawal of a piece of legislation from the consent calendar for the purpose of holding a separate vote on that legislation.



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MEMORANDUM

May 18, 1983

TO: Montgomery County Council

FROM: Paul A. McGuckian, County Attorney



SUBJECT: Legislative Consent Calendar

This Office is in receipt of a request from your Legislative Counsel for an opinion as to whether there are any legal impediments to the County Council taking a final, recorded, roll call vote on more than one bill at a time. It is our understanding that such a proposal would involve the use of a "legislative consent calendar", during which bills that were presented for final reading would be voted on with a single roll call vote.

Except as noted below, the Montgomery County Charter, the Montgomery County Code, and the Council's Rules of Procedure are generally silent on the use of a legislative consent calendar as a means of enacting legislation. Thus, there does not appear to be any direct legal impediment in these documents to the Council utilizing a legislative consent calendar. For the reasons stated below, it is the opinion of this Office, however, that the Council should utilize a legislative consent calendar only after it has been specifically authorized by new legislation and/or by an amendment to the Council's existing Rules of Procedure.

New Legis. Act

In his treatise, Municipal Corporations, McQuillin, at Section 13.44, states the following general proposition:

"A separate vote by yeas and nays for each specific corporate act is required usually. Hence, it has been held that ordinances cannot be legally passed by voting for two or more at one and the same time."
(Citations omitted.)

Similarly, in his Manual of Legislative Procedure, Mason, at Section 530, states the same general restriction on the enactment of legislation:

"A separate vote is usually required on each separate action taken by a legislative body." (Citations omitted.)

The principal judicial justification for prohibiting the use of legislative consent calendars (when they are not specifically authorized) is because such a legislative practice contains no safeguards against the practice of "logrolling." By way of example, logrolling occurs when two or more legislative propositions essentially dissimilar in subject matter are submitted in one legislative package that requires a legislator to affirmatively vote for portions of the legislative package of which he may disapprove in order to secure the enactment of portions of the legislative proposal which he favors. The practice of logrolling has been repeatedly condemned by the Maryland courts, particularly in the context of constitutional amendments submitted to the electorate. Andrews v. Governor of Maryland, 294 Md. 285, 494 A.2d 1144 (1982). See also, Carter v. Burson, 230 Ga. 511, 198 S.E.2d 151 (1973); Moore v. Shanahan, 207 Kan. 1, 486 P.2d 516 (1971); and City of Raton v. Sproule, 78 N.M. 138, 429 P.2d 336 (1967). In fact, the practice of logrolling constitutional amendments is also specifically prohibited by Article XIV, Section 1 of the Maryland Constitution.

As noted above, the Montgomery County Code is generally silent on the use of a legislative consent calendar. Section 2-82 (a) of the Montgomery County Code, however, does require that:

"Vote on final passage of a bill shall be on roll call by yeas and nays. Passage shall require the affirmative vote of four members, except passage of emergency legislation, which shall require the affirmative vote of at least five members. Any vote on any legislation shall be recorded by the secretary in the journal of the council." (Emphasis supplied.)

Absent specific authority for the use of a legislative consent calendar, it is possible to construe the first sentence of this section of the Code as an implicit prohibition against logrolling. Such an interpretation can be avoided, however, by the enactment of legislation and/or the amendment of the Council's Rules of Procedure to provide specifically for a legislative consent calendar.

Importantly, it should be noted that the Maryland General Assembly is authorized to utilize a legislative consent calendar. Article III, Section 27 of the Maryland Constitution, in pertinent part, provides that:

"Each House may adopt by rule a 'consent calendar' procedure permitting bills to be read and voted upon as a single group on both second and third readings, provided that the members of each House be afforded reasonable notice of the bills to be placed upon each 'consent calendar.' Upon the objection of any member, any bill in question shall be removed from the 'consent calendar.'

Further, Section 28 provides that on final passage of bills placed on the consent calendar, the yeas and nays on the entire group of bills be recorded.

It would be the recommendation of this Office that the Council only implement a legislative consent calendar by legislation and/or by an amendment to the Rules of Procedure. The language of Section 27 of Article III of the Maryland Constitution would serve as a good model.

A critical element of any legislative consent calendar procedure is the legal ability of any Councilmember to compel on demand that one or more of the bills on a legislative consent calendar be considered and voted upon separately. This further insulates the use of a legislative consent calendar from the practice of logrolling. It is also the practice that the Council currently utilizes with its existing consent calendar for nonlegislative matters that do not require a recorded, roll call vote.

In summary, the County Council may utilize a legislative consent calendar, but should do so only after such a procedure has been specifically authorized by legislation and/or by an amendment to the Council's existing Rules of Procedure.

If you have additional questions concerning this matter, please contact Stephen P. Elmendorf, Assistant County Attorney, at Extention 2-2600.

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cc: David Jay Frankel, Legislative Counsel