

Parly Notes 2006-5

This edition shall deal with a historic and legal look at parliamentary procedure.

Legal look---is in fact the more important of the two but will “go back” first.

Historic look---the basics of parliamentary law trace back to the accepted procedural rules of the English Parliament—hence the term “parliamentary procedure”. Early proceedings in the New World were very similar to what the people were familiar with from Europe but there was an interest in somewhat more democracy (perhaps not as much as we would like to think there was since the “powerful people” of the early U.S. were inclined to want to “rule” and provide for their maintaining power.) Out of the proceeding grew several plans mostly based on the basic principles of democracy and precedence (Remembering that early on there was great interest in individual colonies (states to be) being free of federal control. Early works that sought to unify the various local rules were the writings of Thomas Jefferson (“Manual of Parliamentary Practice”) which was written for legislative bodies (specifically the National bodies) ; Luther Cushing whose material attempted to address all types of groups (governmental and non governmental) and adhered to ideas of “common parliamentary law”, and then along came Henry Robert with the first edition of “Roberts Rules of Order” (actually in more or less a series of publications.) Time frame: Jefferson 1801, Cushing 1845, and Robert’s 1875.

Today, the federal and state legislatures use hybrid forms of Jefferson and Cushing (and others) that are specific for legislative bodies in more or less continuous session. Therefore, the caution of watching either Congress or Indiana Legislature in action and understand what they are doing parliamentary procedure wise.

Over the years several other “manuals” and “books” were published directed more at non-legislative bodies which were in continuous session. Others include publications by Sturgis (whose publication of most recent origin was put out by AIP as “Standard Code of Conduct”), Demeter, and others. Various groups (including local governmental units adopted as their “parliamentary authority” (PA) one of the publications.) Still there remains in law a concept of “common parliamentary law” which is still considered as the basic point when a group has no officially adopted PA. A BIG point ---if there is no documentation of officially adopting a PA then the group has none.

Courts have consistently held that adherence to some parliamentary procedure rules is required both for governmental and non governmental groups when a concern arises. For those who would venture into working with groups on operations particularly concerning parliamentary procedure ---a word of caution ---somewhere along the line things of a legal nature may be of more concern than simply “did they do it right” parliamentary procedure wise as most of us would be concerned. The legal side is an attorney’s area not that of a parliamentarian---don’t go there!

Legal overview---Where does parliamentary procedure rules fit in ---who says what about what how things can/should be handled?

First (and most important point)—Law trumps “rules”; higher law trumps lower law; higher rules trump lower rules---basically saying governance is from the top---down. And, in point of fact, the local “Parliamentary Authority” (PA) comes after everything else. That is, Robert’s or any other PA only comes into play where a subject is not covered by a higher law or rule.

Order of Precedence in operation of an organization (including governmental body and non governmental group such as the FFA.)

Federal laws trump everything else---in the U.S. no state (or organization) can establish laws or rules contrary to federal law.

State Laws trump anything within that state---an easy example: speed limits vary state to state and one must observe the law of the state they are driving in. Again, local governmental bodies and any organizations operating in a given state can not violate a law of the state. A couple of points of interest to those who get involved in such things:

Dillon’s Rule versus “Home Rule” states: Dillon’s Rule is a term for the concept that local units of government only have the powers specifically given them by the state (same concept applies as to relationship of federal government to state governments). That is, all power is in the hands of the state unless specifically granted to local governmental units (county, city/town, school board, etc.)

“Home Rule” (of which Indiana is legally set up to be by laws of a few years ago)—says: local governmental units have all powers not specifically taken over by the state. Ever wonder why local units of government get “excited” every session of the Indiana Legislature which invariably takes over more and more power as to being able to say what local government can and can not do?

How does governance of the FFA fall into Dillon’s rule and Home Rule---tough question, but likely more of the order of Home Rule.

Where do governance of organizations such as FFA come into play: Important to note some things about the FFA different than the local Lions Club or Moose or Farm Bureau, etc..... The FFA is very directly associated with a federal branch of government (note who pays the salaries and some administration costs of the FFA) and also the Indiana government (where is the State Advisor and Executive Director and who pays them). The FFA is a federally “chartered” organization and some have worked real hard to avoid anything that might bring any review of that into question ---even to resistance to changes in some parts of the National FFA Organization’s constitution and bylaws because they fear this might trigger review as a requirement. Yes, the National FFA Organization does still operate under the Constitution and Bylaws governance documents (even though the current most common practice is to use a bylaws situation only.)

So what governs the local FFA chapter---certainly the federal and state laws apply but in order to be affiliated with the National FFA or Indiana FFA a local unit must abide by all provisions of the “higher” order rules. So the order of power is:

National charter and governing documents  
State governing documents and rules

## Local Chapter documents and rules.

Then and only then --- is where “Robert’s” or other PA comes into play.

Points to Ponder include:

- a) “Robert’s Rules of Order Newly Revised” is the PA authorized in constitution and/or bylaws of both the National FFA and Indiana FFA. That is, the statement is basically this: “when a question arises that is not covered in these document concerning conducting of business in a meeting then the Parliamentary Procedure Authority to use as guidance shall be “Roberts--- “ (generally with a terms of “latest edition” .) Realize that every organization you work with may not have such designation of either “Robert’s” or any other “PA”. This may well present a problem since what guidelines should be followed and particularly when a problem arises. (If this point seems to be brought up too often----anyone who has worked with many groups will understand that it can not be stressed too much and must be the start of any working with the group---check their governing documents carefully.)
- b) PA only applies after provisions of constitution/bylaws and any “standing rules”-- -this is a key point ----ONLY after.
- c) Where does Tradition stand---sometimes things are done on a consistent basis by an organization but it is not in compliance with their PA and is not authorized in any group accepted documents. A prime example: for years in Indiana FFA it was traditional for the state nominating committee to move: “—to adopt (meaning in this case to elect) the slate as presented” for state officers then a vote occurred on that motion without opening the floor for any other nominations. No where in the Indiana FFA governing documents was this concept voted in by delegates (at least it was not in the documents) and “Robert’s” does not allow for this (unless subordinate to adopted rules). So---was it legal to do---based on a provision in “Robert’s” that if something has traditionally been done without challenge then it becomes kind of a defacto rule and can with stand challenge. (Note: current Indiana FFA Bylaws do allow for a motion to elect the slate and some districts have included the same provision----has your local chapter????)

Finally—one example of where top down governance applies: The state of Indiana says that all governmental units must go by the definition that “majority vote” is a majority of the members of the group/board/council/etc.---but “Robert’s” says a majority vote is a majority of “votes cast”. PERIOD ---So—what is difference of a 7 member school board and a 7 member local Farm Bureau board---the school board must have 4 votes for a majority but the FB board would have a majority on a vote of 1 for, 0 against, and rest of group abstaining (abstaining votes DO NOT COUNT AS EITHER FOR OR AGAINST-- -actually in the case of the school board abstaining votes would have the same effect as voting against).