

REPORTS OF SELECT COMMITTEES

REPORT OF THE COMMITTEE ON ETHICS
TO THE HOUSE OF REPRESENTATIVES
OF THE STATE OF MINNESOTA

The House Committee on Ethics received a complaint on March 15, 1973, stating Representative Walter Klaus failed to file those reports required by Minnesota House of Representatives, Rule No. 70. The Committee also received a copy of a letter from Representative Klaus to the Majority Leader of the House requesting that Representative Klaus be excused from filling out the report on the grounds that he considers this "an unwarranted and unconstitutional invasion of one's privacy." The Committee notified Representative Klaus of the complaint and scheduled a meeting for Monday, March 26, 1973, to investigate the complaint.

Representative Klaus failed to attend this meeting but by letter to all Committee members stated that he would "not be appearing at the meeting of the Committee . . . inasmuch as this Committee has no jurisdiction over the matter. . . ." The Committee reviewed the jurisdiction question and consulted with the Attorney General's office. The Committee determined pursuant to such review and consultation that it did have jurisdiction pursuant to Rule No. 70.

A second hearing of the Committee was scheduled for Monday, April 9 and Representative Klaus was again notified and invited to attend this hearing. Representative Klaus attended the April 9 hearing and reported that he considered Rule No. 70 an unwarranted and unconstitutional invasion of one's privacy. The Committee gave Representative Klaus an additional few days to file. Representative Klaus again failed to file the report required pursuant to Rule No. 70. On April 10, Representative Klaus wrote to the Speaker of the House and the Majority Leader of the House requesting that he be excused from the rule and explaining why he thought Rule No. 70 was unconstitutional. The House Research Department reviewed Representative Klaus' letter in a memorandum dated April 19, 1973.

The Committee reviewed Representative Klaus' letter and the House Research memorandum and finds that subject to whatever legal or constitutional rights he may have to the contrary, Representative Klaus willfully violated House Rule No. 70 by failing to file the required statement of economic interest. The Committee recommends that this report be printed in the House Journal along with Representative Klaus' letter of April 10, 1973 and the House Research memorandum dated April 19, 1973.

TOM BERG, Chairman: SALISBURY ADAMS, CARL M. JOHNSON,
and DALE E. ERDAHL.

STATE OF MINNESOTA
HOUSE OF REPRESENTATIVES

April 19, 1973

TO: Representative Tom Berg
FROM: Jim Abelsen, Acting Director
SUBJECT: Validity of House Rule 70

The only reported case to be found which considers the validity of an enactment requiring public officers to disclose their financial condition is *City of Carmel by the Sea v. Young* (1970) 85 Cal. RPTR. 1, 466 p. 2d 225. The requirement for disclosure in that case was held invalid as a violation of the individual's privacy because there was no showing that the requirement of financial disclosure had any relationship to any possible conflict of interest which might arise in the course of his duties.

The California enactment required every public officer or candidate to file a statement describing the nature and extent of investments, other than real estate, which he, his spouse, or minor child held which were in excess of \$10,000.

It is important to note as the court pointed out, that the statute encompassed indiscriminately, persons holding office in a state or local agency regardless of the nature of the activities of the agency. This is a key point in the case and serves to distinguish the California statute from House Rule 70. The court also pointed out that the intent of the legislation could be achieved by an enactment drawn more narrowly and precisely than the one in question.

The question presented by this decision, then, is *whether or not there is any reasonable relationship between what the members of the Minnesota Legislature are required to disclose and the possible conflict of interest which might arise.*

In answer to this question, it should be pointed out that the California court in their opinion said, "It may well be that such extensive disclosure rules (i.e., all investments in excess of \$10,000) may *appropriately be imposed by the Legislature upon its own members.*" The court based this statement on the fact that a state legislator, because of his dealings with all areas of state government, including such things as appropriations and public employment, and because of the broad range of issues and policy matters with which he is involved, is in a unique position. His official duties can very easily conflict with any financial holdings or transactions which he may be involved in and there is, therefore, a valid reason for requiring disclosure.

The conclusion to be reached from a reading of the *Carmel* case is that a member of the Minnesota Legislature, contrary to what

has been suggested, cannot refuse to comply with Rule 70 on the basis of this case, and in fact, the case serves as authority for the validity of Rule 70.

In his letter of April 10, to Representative Sabo and Anderson, Representative Klaus raises a number of other issues in refusing to comply with the requirements of Rule 70.

The basic argument throughout his letter is that such disclosure is an invasion of his privacy. The *Carmel* case refutes this contention. It should also be pointed out that public officials, every since the case of *New York Times v. Sullivan*, have been treated differently than other individuals when it comes to questions of privacy. Because of the public interest in their activities, and the need for the people to be fully informed, public officials are extremely vulnerable in their private lives and business dealings. They are subject to pressures and harrassments that private citizens are not and it is very difficult for them to successfully claim an invasion of privacy or violation of any constitutional rights.

Secondly, it should be pointed out that the question of invasion of privacy involves a balancing of the state's interest in combating conflicts of interest with the individual legislator's fundamental personal liberties. In resolving this conflict, the state must show that there is some relationship between what's to be disclosed and what the conflict of interest might be. And, as indicated above, in the *Carmel* case, the legislator is in a unique position that carries with it an inherent possibility of conflict. The people's right to know far outweighs the individual legislator's right to keep his relevant financial affairs private.

Mr. Klaus also raises several provisions in the Minnesota Constitution as grounds for his refusal. He first of all cites Article VII and Article IV, Sections 4 and 25 of the Minnesota Constitution which refer to residence, voting status and house proceedings. It is his claim that Rule 70 is not covered by these sections and is, therefore, unauthorized.

In answer to these objections, Rule 70 does not increase the minimum qualifications for legislative office as prescribed by the Minnesota Constitution. Its thrust is at least twofold, to preserve the integrity of the Minnesota Legislature and to provide a vehicle whereby the Minnesota Legislature can fulfill its constitutional duties as prescribed by IV S3, 4, 14. These sections delineate specific rights and duties which the Minnesota Legislature must be concerned with—i.e., expulsion of members (IV, 4) and impeachment (IV, 14).

It is not the intent nor effect of Rule 70 to alter the present Minnesota constitutional law regarding qualifications for election to legislative office. However, once elected, the legislature is duly bound by the aforementioned constitutional provisions to uphold the integrity of the Minnesota Legislature.

Succinctly stated, Rule 70 enhances the Legislature's ability to fulfill its constitutional charge by providing necessary information.

Mr. Klaus also claims that Rule 70 is, in effect, an ex post facto law which is prohibited by Article I, Section 11 of State Constitution. This argument is also without merit. Ever since the case of *Calder v. Bull*, 3 U.S. 386, 1L. ed. 648 (1798) the prohibition on ex post facto laws has applied only to criminal statutes. Retroactive tax legislation, for instance, which imposed taxes on income earned in prior years has consistently been upheld.

It is also contended by Representative Klaus that Rule 70 implies a property test for holding office which is forbidden by Article I, Section 17. In response, it should be pointed out that if the individual has no property he can report that under Rule 70 and he will still be allowed to hold office.

Mr. Klaus next makes the point that Rule 70 is a violation of the Fourteenth Amendment, equal protection clause, in that legislators are required to do something that private citizens are not required to do. The equal protection clause, contrary to popular belief, does not provide that there can be no discrimination or differentiation between people or groups of people. Many laws, in fact, do discriminate. For instance, only adults can drink or hold a driver's license. But, what the state must show when they do differentiate between groups of people is that there is a rational basis for the distinction—in this case, the distinction between legislators and private citizens. As pointed out in the *Carmel* case, because of the unique position that a legislator occupies, it is certainly reasonable to require that a legislator report his financial status even though other citizens are not required to do so. The point that must be made in response to Mr. Klaus' equal protection argument is that as long as there is some good reason why the state requires one group of persons to do something that is not required of another group, then the equal protection clause of the U.S. Constitution has not been violated.

STATE OF MINNESOTA
HOUSE OF REPRESENTATIVES

April 10, 1973

Martin O. Sabo, Speaker
House of Representatives
Irvin N. Anderson, Chairman
Committee on Rules and Legislative Administration
State Capitol
St. Paul, Minnesota 55155

Gentlemen:

In response to your reminder of March 13 to me, Mr. Anderson, that I had not complied with Rule 70 of the House of Representa-

tives, I wrote you and asked to be excused from complying "on the grounds that I consider the Rule an unwarranted and unconstitutional invasion of one's privacy". I herewith amend and renew that request.

I earnestly ask to be excused from complying with the provisions of Rule 70 because I consider the rule to be an unwarranted and unconstitutional invasion of one's privacy and to be unconstitutional for several other reasons.

To help you understand my position let me tell you why I hold Rule 70 to be unconstitutional.

1. It is an invasion of one's privacy. Amendment IV of the United States Constitution and Section 10 of Article I of our state constitution protect us as citizens against unreasonable searches and say each shall be secure in his effects. No reason for invading this privacy is mentioned in Rule 70.

2. Rule 70 is unconstitutional in that it sets up a requirement for holding office not listed among the constitutional qualifications. I meet those of Article IV, Section 25 and am not disqualified by Sections 3, 9 or 15. I also meet the qualifications specified by Article VII and am not disqualified by any of Article VII's or other constitutional provisions or restrictions. No place does the constitution say the legislature, or one of its houses, may set up additional requirements such as publicly declaring a statement of his personal finances.

3. Even if the constitution permitted setting up of requirements for sitting in the legislature in addition to those stated in the constitution, this one would be invalid because it was added after I was elected and had in fact assumed the office.

Enactment of this rule is in effect an ex post facto law which is specifically prohibited by Article I, Section 11, of the state constitution.

At the time I filed I satisfied the constitutional requirements for holding office and was supplied with the statutes outlining the process of and rules governing the election. No place in these or anywhere else was it indicated that after one was elected and assumed office the additional requirement of filing a statement of his personal financial status would be required of a representative. Therefore Rule 70 is unconstitutional for this reason.

4. Article IV, Section 4, of the state constitution provides that each house of the legislature may set up its rules "of its proceedings". Rule 70 is an unconstitutional rule in that the constitution does not give either house the power to make rules governing matters other than its own proceedings. Rule 70 has no relation to the proceedings of the House.

5. Rule 70 is unconstitutional in that it implies a property test for holding office. Article I, Section 17, says, "No amount of property shall ever be required as a qualification for any office

of public trust under the State." It would seem this means that whether one has much property or none, the fact shall have no bearing on his constitutional right to hold office. Therefore to be required to disclose the nature or amount of one's property is an invalid demand.

6. Rule 70 is unconstitutional in that it is a violation of the fourteenth amendment of the United States Constitution. The rule does not give representatives "equal protection of the laws."

(a) A house member is required to make a disclosure not required of other citizens. This defies the equal protection clause.

(b) The house member who has certain types of property and/or debts is protected by the rules from not being required to publicly disclose them; other members with other types of assets and liabilities must disclose them.

(c) The rule discriminates further: While the rule does not disclose whether it was conceived on the assumption that the possession of property is ethical and good or that such possession is unethical and evil, it is in either case discriminatory. In fact the rule in no way indicates its reason for being. If it is to be assumed that possession of property is a virtue, it is unfair. One man whose chief assets may be \$1,000 which he has invested in stock of Northwestern Bancorporation, for example, shall disclose this fact. But the rule does not recognize for disclosure another man who may have \$20 million deposited in banks of the same corporation.

If it is to be assumed that the rule exists because possession of property is evil, the rule is also discriminating and lacking in giving equal protection. In the example above the man with assets of \$1,000 valuation must disclose his questionably acquired holdings while the man with \$20 million, however shrewdly acquired, is free not to disclose.

I have heard some talk of "conflict of interest" and fear that a house member's legislative activity may be selfishly rather than publicly oriented because of his personal economic interests. If this is in fact the reason for Rule 70 it is unconstitutional. It discriminates against the public in addition to the legislator. Continuing with the illustration: Bank interest rates are regulated by legislation. In the example above the person with \$20 million of deposits will likely be primarily interested personally in receiving high interest from the bank. An increase of even a fraction of one percent could be of considerable benefit to him. Of course the higher interest a bank might have to pay its depositors, the higher interest it would be required to charge its borrowers of the general public.

Conversely the \$1,000 stockholder has no special concern in whether the interest the bank pays depositors is at a high or

low rate. He would be only interested in the margin between rates for depositors and for borrowers. It could be to his advantage that these be kept low. Under Rule 70 he must file his relatively small investment and so he and the borrowing public must be discriminated against.

(d) In a subtle way Rule 70 also fails to provide "equal protection" and is therefore unconstitutional. The form required to be filled in under Rule 70 and Rule 70 itself provide only for a listing of certain assets and liabilities. It does not provide for a legal declaration of these. No one is required to sign and assert (to say nothing of swearing under oath) that the information given on his report is complete and correct. No one can be called for giving false or incomplete information. This discriminates against the House member who fulfills the requirement of Rule 70 in good faith (and I am sure all Representatives in the 1973 legislature who have complied with Rule 70 fall in this category). If theoretically, or, assuming the rule is retained, if in some future legislature, some members for any reason chose not to give a complete disclosure of the asked for information, he could really not be held to account for giving false or incomplete information. He could correctly say he had never said his statement was a true and complete account—he had never signed any statement to that effect; he had been required only to submit a listing above which happened to appear his name. So under the Rule he is treated equally with the man who submits a statement in good faith. This is unconstitutional discrimination against the latter.

7. The rule is also unconstitutional in that portion referring to the House Committee on Ethics complaints for its violation or failure of compliance therewith. This committee is a statutory committee set up by Minnesota Statutes 1971, 3.89, Subd. 2. Its duties and powers are specifically defined in Minnesota Statutes 1971, 3.90, which section also includes provisions for penalties against those prematurely revealing complaints. Nowhere in these sections is there provision for its jurisdiction over matters not specifically outlined in M. S. 3.87 - 3.92. Enforcement of, or jurisdiction over, the provisions of house rules or failure of compliance therewith are not among the powers and duties delineated and no place is there provision that the committee may be given such powers and duties by house rule. No place in our constitution or in other law is there provision that any officer or agency of government can have its constitutional or statutory powers or responsibilities either increased or decreased by unilateral action of one house of our state legislature. Therefore in this respect Rule 70 is unconstitutional. I hold that the house committee on ethics has no jurisdiction over noncompliance with Rule 70. Any action it may take relative to Rule 70 can have no effect of law or house rule.

In view of what I consider the blatant unconstitutionality of Rule 70 as outlined above I have chosen not to file the statement

suggested by the rule. Upon assuming the office of state representative I subscribed to an oath to uphold the constitution and laws of our state and nation. I believe I am doing just that in not filing the statement of personal economic interest. I cannot in my own conscience fulfill my oath and also file such a report.

For these reasons I hereby ask through you as Speaker of the House and Chairman of the Committee on Rules and Legislative Administration, respectively, to be excused from filing the statement of my personal financial status as suggested in Rule 70.

Sincerely,

WALTER K. KLAUS
State Representative

WKK:ce

cc: Members, Committee on Rules and
Legislative Administration
Representative Thomas Berg
Representative Dale Erdahl

Berg moved the adoption of the report and the report was adopted.

INTRODUCTION OF BILLS

Haugerud; Andersen, R.; Graba; Graw; and Berglin introduced:

H. F. No. 3689, A bill for an act relating to the organization and operation of state government; establishing sections of capitol complex security police and capitol complex security guard and information services within the division of capitol complex security in the department of public safety; appropriating money; amending Minnesota Statutes 1971, Section 299D.03, Subdivision 1; and 299E.01, Subdivisions 2 and 4, and by adding subdivisions.

The bill was read for the first time and referred to the Committee on Appropriations.

Anderson, I.; Munger; Kelly; Eken; and LaVoy introduced:

H. F. No. 3690, A bill for an act relating to a study of transportation of grain; feasibility study to be conducted; appropriating money.

The bill was read for the first time and referred to the Committee on Appropriations.