

SPECIAL ORDER OF BUSINESS

The SPEAKER. The Chair recognizes the majority leader for the purpose of placing a motion on a special order of business.

Mr. MANDERINO. Mr. Speaker, I move that we take up now, as a special order of business on today's calendar, HB 84, PN 94, on page 12.

On the question,
Will the House agree to the motion?
Motion was agreed to.

Agreeable to order,
The House proceeded to third consideration of House bill No. 84, printer's No. 94, entitled:

A Joint Resolution proposing an amendment to the Constitution of the Commonwealth of Pennsylvania providing for the election of the Attorney General and providing for his qualifications.

On the question,
Will the House agree to the bill on third consideration?
Bill was agreed to.

The SPEAKER. This bill has been considered on three different days and agreed to and is now on final passage.
The question is, shall the bill pass finally?

The SPEAKER. The Chair recognizes the gentleman from Delaware, Mr. Doyle.

Mr. DOYLE. Mr. Speaker, this is the second session of the legislature that will consider this bill. It is a constitutional amendment which must pass two sessions before it can go out to the voters on referendum. An identical bill was passed in 1974 in the House by a vote of 183—7 and in the Senate by a vote of 41—8, and many of those members who voted for and in favor of the legislation in 1974 are here today to, I hope, again vote for this needed change in our constitution.

Let me say first, as I have explained several times, that there is nothing in this legislation nor in its purpose directed towards any public official in Pennsylvania, past, present or future. It passed in 1974 before our present Attorney General was the Attorney General, and when it is implemented in 1980 and 1981, the present Attorney General will not be the Attorney General of Pennsylvania.

Many of you heard from our present Attorney General, Bob Kane, yesterday in caucus, and he argued that why should we change 200 years of history in Pennsylvania. Our answer is that it is time that we needed a change in Pennsylvania and join our other states, 42 states of the 50, which elect their attorney general. The basic reason is that the attorney general's office is no longer conceived of as a legal adviser to the governor—

The SPEAKER. The Chair apologizes for interrupting the gentleman, Mr. Doyle, who is discussing an extremely important bill, a possible amendment to the constitution of this Commonwealth.

The Chair thanks the gentleman for his patience. The gentleman may proceed.

Mr. DOYLE. Thank you, Mr. Speaker.

The office of the attorney general is no longer conceived of as

a civil law adviser to the governor but rather the chief legal officer of the state. In the manual "THE OFFICE OF ATTORNEY GENERAL," Published by the Association of Attorneys General in conjunction with the Committee on the Office of Attorney General, it was cogently put that "The primary argument for an elective Attorney General is that he is an attorney for all the people, and should be chosen by them. He is the Governor's advisor, but not exclusively; the Governor is merely one among many clients. By making the Attorney General directly responsible to the electorate, he remains subject to the ultimate source of power and will be more responsive to public needs."

In addition, we conceive of the office as taking a stronger role as a prosecutor. We recently in the Judiciary Committee heard evidence of the need for an organization in Pennsylvania regardless of how it is structured or what it is called, a strong committee or central organization to combat organized crime. We conceive of the office of attorney general as heading such an office and taking a stronger role as a prosecutor.

We did in the legislature give the attorney general that mandate several years ago when we passed Act 327. We have also passed other legislation in Pennsylvania in the past several years strengthening the attorney general's hand in dealing with the criminal aspects of our law rather than the civil.

Finally, we need to pass this bill now because it needs to go out on referendum in the fall. It was held up in the spring that it could not make the primary, simply because there was not sufficient time to get it through both houses. But it is needed now so that the bill can go out and go to the voters of Pennsylvania for their approval in the fall election of 1977.

Thank you, Mr. Speaker.

The SPEAKER. The Chair recognizes the majority leader.
Mr. MANDERINO. Mr. Speaker, will the prime sponsor of the bill yield to interrogation?

The SPEAKER. Will the gentleman, Mr. Doyle, consent to interrogation?

Mr. DOYLE. Yes, Mr. Speaker.

The SPEAKER. The gentleman may proceed.

Mr. MANDERINO. Mr. Speaker, there are many members of the House, I am sure, who favor HB 84 on its merits. I have a particular problem which, although may seem technical in nature, does give me some concern should we pass this bill in the form in which it is today. My concern is directed to section 2 of the bill, section 2, on page 4 of the bill. It says, "In the event of approval of this amendment by the electors, there shall be a vacancy in the office of Attorney General which shall be filled as provided herein."

I have read the bill backward and forward, and I can find no provision for the filling of a vacancy. Can the sponsor of the bill speak to that point?

Mr. DOYLE. Yes, Mr. Speaker. The bill in the present section, section 1 of the bill, on page 3, line 15, says, "The Governor shall in a similar manner fill vacancies in the offices of Auditor General, State Treasurer, justice, judge, just the peace and in any other elective office he is authorized to fill."

Now, the interaction of the present constitution, paragraph 1 of the bill, and our Statutory Construction Act is as fo

Statutory Construction Act says, "That in case of a vacancy happening by death, resignation or otherwise, in any office created by the constitution or laws of this Commonwealth and where provision is not already made by said constitution and laws to fill said vacancy, it shall be the duty of the Governor to appoint a suitable person to fill such office, who shall be confirmed by the senate, if in session, and who shall continue therein and discharge the duties thereof till the first day of January next succeeding the first general election which shall occur three months after the happening of such vacancy."

by the interaction of this bill with the Statutory Construction Act—and, incidentally, we had confirmation of this from the Legislative Reference Bureau; I am reading from their report to me in the early part of this year—the Governor would appoint the attorney general when the vacancy is created until the end of his term and then there would be another appointment until the attorney general is elected, which would be in

MANDERINO. Mr. Speaker, you are aware that section 2 states that a provision was made in this bill for a manner in which the vacancy would be filled.

DOYLE. It is referring to what I read to you, line 15 on page 3. That is how it was dealt with. It was done by the Legislative Reference Bureau specifically. It was not overlooked. That is exactly what it means.

MANDERINO. Are you saying that the Legislative Reference Bureau intended to indicate that there was a manner for filling vacancies and that their reference in section 2 was to line 15 on page 3 of the bill?

DOYLE. By reference to our present constitution, yes. By interaction of the Administrative Code that I have indicated.

MANDERINO. Are you satisfied from the opinion that you received from the Legislative Reference Bureau that there is no gap and that the Governor will in fact have the right of appointment under the Statutory Construction Act and under section 2 and under the constitutional amendment if adopted?

DOYLE. Yes, Mr. Speaker, I am.

MANDERINO. Thank you.

THE SPEAKER. The Chair recognizes the gentleman from Philadelphia, the distinguished Representative, Mr. Berson.

BERSON. Wow!

THE SPEAKER. The reason the Chair called Mr. Berson distinguished is that in all the comments on the elevation of the majority leader to the speakership, I think the only one who said that the Speaker was intelligent was Mr. Berson. Some of the other articles indicated that the House had elected a rather ignorant and oratorical idiot. Mr. Berson is the minority, but I hope he is right.

You may proceed, Mr. Berson.

BERSON. I am certainly the minority on this bill, I am afraid, but I do want to take a moment to reiterate the arguments briefly that I made in opposition to this bill on its first passage through this House.

I am opposed to the concept of an elected attorney general. Briefly my reasons are, first, it seems to me that the trend in

government and the trend in Pennsylvania government has been away from elected officials in the executive branch of government. We in fact only have three elected officials in the executive branch — the governor and lieutenant governor, being for all practical purposes one office, the auditor general, and the state treasurer. I think that is wise. I think it is wise because I think it is bad that authority be diffused in the executive branch. I think it is bad for a governor to be able to point to some other elected official and shuffle off responsibilities for executive-branch action or executive-branch policies on some other official. This only confuses the public when in fact what we ought to have is one official elected by all the people of this state responsible for the actions and policies of his or her administration, as the case may be. So I think that this move to further diffuse and confuse the public is a wrong step.

Secondly, I think the attorney general's role as the legal adviser to the Governor and as legal adviser to the government will be totally wiped away by an elected attorney general. What I fear may happen is that we will have a parallel system at great expense to the taxpayers of this Commonwealth. For instance, if the attorney general to be elected were of the opposite political party to the incumbent governor, it is not practical to think that the governor is going to turn to him for his most confidential legal advice, and since one of the major jobs of an attorney general is, in fact, to mediate between competing claims of governmental departments, it is not likely that a hostile attorney general is going to be relied upon for that job.

What, in fact, will probably take place is that the Governor will appoint some person or a number of persons to act as counsel to the governor or whatever title is assigned to them to perform those functions, because he is entitled to confidential advice from his lawyer and his administration is entitled to legal advice from attorneys who are loyal to the principles upon which that administration was elected.

I think it will saddle the taxpayers of this state with a parallel system of attorneys general, counsels or lawyers or whatever you want to call them and will not advance their interest one whit.

Therefore, I would suggest for both grounds that this is an expensive move, that we do not know what it is going to cost, that we have gone 200 years in this state without elected attorneys general that the entire legal structure of this state has been based upon appointed attorneys general with their deputies responsible to that attorney general, that we have no idea what the implications of this measure are, and that in the final analysis all it will do, probably, is enable the governor to point the finger at someone else for some bad action or some bad policy. I would strongly suggest that we reject this measure.

THE SPEAKER. The Chair recognizes the gentleman from Delaware, Mr. Doyle.

DOYLE. Very briefly, Mr. Speaker: The counter-argument to Mr. Berson's statement is that the Governor presently has a solicitor general upon whom he relies for his personal legal advice. The best summary that I can give the members as far as the type of officer we are speaking about is to quote Louis Lefkowitz, who is the attorney general of New York. He was elected first in 1958 and has been reelected 4 times since

