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TO: Chairman, Committee on
Governmental Institutions

DATE: 7-11-85

FR: Legal Counsel

RE: Delegate Proposal No. 198-85
Legal Opinion No. 34

You have asked whether certain acts outlined in delegate proposal 198-85 are adequately provided for under the Criminal Code.

In the proposed constitutional amendment, there are several areas that may not be covered by the Criminal Code. Depending upon the given facts of an incident, a threat may not be criminal and the detention of a person may not be criminal.

A constitution or a statute may give a legislative body the power to perform executive and judicial functions of policing its members and non-members. This power may include the authority to impose punishment for violation of its rules and regulations. A violation of these constitutional or statutory laws is known as contempt of congress. Yellin v. U.S., 374 U.S. 109, 10 L.Ed. 2d 778 83, S.Ct. 1828.

The United States Constitution expressly confers upon each house of Congress the power to punish its members for disorderly behavior, and the United States Supreme Court has indicated that this constitutional provision gives Congress the power to punish contempt persons other than its members if the contemptuous conduct occurred in proceedings strictly of a legislative character or in the cause of an inquiry within the legitimate scope of the legislative function of that body. Jurney v. MacCracken, 294 U.S. 125 79 L.Ed. 802, 55 S.Ct. 375. The power of Congress to punish for contempt is found in Article I, sec. 5, clause 2:

Each House may determine the rules of its proceedings, punish its members for disorderly behavior, and, with the concurrence of two-thirds, expel a member.

Rec'd 7/12/85 - pm / cf

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Even without a specific constitutional clause giving the legislature the power to police itself and to punish, from the power to legislate given by the Constitution to Congress, there is to be implied the right of Congress to preserve itself. It may deal by the way of contempt direct obstructions to its legislative duties. Marchall-v. Gordon, 234 U.S. 521, 61 L.Ed. 881, 37 S.Ct. 448.

The power of a legislative body to punish a private citizen for a past and completed act is well entrenched in our common law history. Potts, Powers of Legislative Bodies to Punish for Contempt, 74 U. of Pa. L. Rev. 691. This power was first used by Congress in 1795, 5 Annals 4th Cong., 1st Sess. 166, and has been used more recently in the Watergate hearings of 1973-1974.

Since there is an implied contempt power of legislature, no specific language need be placed in the constitution, although it is advisable that some be given so that there is no question of the legislature's power. The legislature may enact statutes specifically delineating contemptuous conduct and impose specific penalties for the conduct. Where the governing constitution expressly authorizes the legislature to punish for contempt in certain instances, it has been held that the provision does not, by implication, take away the inherent power of the legislature to punish for contempt in other instances. Lowe v. Summers, 69 No. 637. Jurney v. MacCracken.

The proposed amendment to the constitution granting to the legislature contempt of congress powers may be too narrowly drawn for a constitution. Certainly the following language of the proposed amendment:

. . . threaten harm to the body or estate of any of the members of such house; or who shall assault, arrest or obtain any witness or other person's way going to or returning therefrom; or who shall rescue any person arrested by order of such house . . .

allows the legislature to punish those whose acts are outside of a legislative proceeding. But specific conduct, such as the above, may be better provided for by legislative enactment rather than by constitutional fiat.



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