



REPUBLIC OF LIBERIA
MINISTRY OF JUSTICE

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OFFICE OF THE MINISTER / ATTORNEY GENERAL

NOT/M-AG/MOJ/440/2024/RL

December 10, 2024

Hon. Sylvester Grisgby
Minister
Ministry of State for Presidential Affairs
Executive Mansion
Capitol Hill
Monrovia, Liberia

Dear Hon. Grisgby:

OPINION OF THE MINISTER OF JUSTICE AND ATTORNEY GENERAL

1.1. THE REQUEST

I have the honour to acknowledge receipt of your communication of December 7, 2024 requesting an Opinion of the Minister of Justice and Attorney General of Liberia on the implications of the decision of the Honourable Supreme Court, handed down on Friday, December 6, 2024, in the case: "In re The Constitutionality of Several Actions taken by Certain Members of the House of Representatives." I note that you specifically referenced the submission of the 2025 Budget to the Legislature for legislative passage and approval, and seek a Legal Opinion on how the Government may proceed in light of the Opinion and Judgment of the Supreme Court, stated herein. More specifically, you would have my office advise by a Legal Opinion as to how the Court's Opinion affects the process of approval of the Budget by the Legislature.

1.2 THE AUTHORITY FOR PROVIDING AN OPINION

In providing this Opinion as requested by you, I do so under the authority of Sub-section (c) of Section 22.2, Chapter 22, of the Executive Law, Title 12, Liberian Code of Laws Revised, which states as part of the functions of the Minister of Justice and Attorney General of Liberia that he shall "Furnish opinions as to legal matters and render services requiring legal skill to the President and other agencies of the executive branch of the government..." Indeed, in recognition of the authority vested in the Minister of justice and Attorney General to provide legal opinions as to the laws of Liberia, the Honourable Supreme Court of Liberia has on numerous occasions, and as appropriate, requested the Minister of Justice and Attorney General of Liberia to appear before the Court and state opinions as to the laws. It is in light of that perspective that I provide this Legal Opinion, the Opinion of the Minister of Justice and Attorney General of Liberia.

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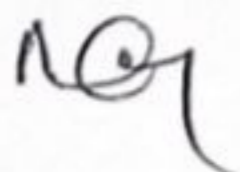
In providing this opinion, we have reviewed and are relying on the following:

1. The Constitution of Liberia, adopted in 1984, which came into effect on January 6, 1986, and amended thereafter.
2. The Opinion and Judgment on the Supreme Court delivered on December 6, 2024.
3. The Rules and Procedures of the House of Representatives

1.3 ANALYSIS OF THE FACTS

A brief analysis of the controversy necessitating the decision of the Supreme Court is crucial to the Legal Opinion which I herein provide. A majority of the members of the House of Representatives, concerned with the activities of the Speaker of the House of Representatives, Honorable J. Fonati Koffa, which they believe bordered on corruption and conflict of interest, requested that he resigns as Speaker of the House of Representatives, which demand he rejected. The majority members of the House then determined that they would not, in the face of the accusations levied against the Speaker, sit at a session in which he presided unless and until he defended himself against the accusations and showed that there was no truth to the said accusations. In the face of the rejection of the demands made upon him as Speaker of the House and the decision of a majority of the House not to attend sessions at which he presided, the Speaker was unable to preside over any session of the House as he could not obtain a quorum for the commencement of any business of the House. This inability to preside due to the lack of a quorum continued for a protracted period – for more than 15 sessions of the House.

However, concerned that they had a responsibility to attend to the business of the House and of the people who elected them to the Office of Representatives, and as the Constitution requires a quorum for the conduct of business and they were of a sufficient number to constitute a quorum of the House for the conduct of business, they determined to meet, consistent with the Constitution, with a constituted quorum to hold the sessions of that Body and to conduct activities imposed by law upon the Legislature. It was in regard to this position taken by the majority of the members of the Legislature that the Speaker and a number of Representatives constituting the minority resorted to the Supreme Court in the captioned proceeding referenced above, requesting the Supreme Court to declare the below four actions of the majority unconstitutional and illegal, and specifically citing Articles 20 and 49 of the Constitution and Rules 10 and 48 of the Rules and Procedures of the House of Representatives (the “Rules of the House”):



1. Convening of a Plenary and making certain decisions without the Speaker presiding;
2. Suspending three members of the House of Representatives without affording them their constitutional due process rights;
3. Restructuring and reconstituting statutory committees; and,
4. Seizure of, and acting on the 2025 Draft National Budget.

Hon. Koffa and the co-petitioners also requested the Supreme Court to place a Stay Order on any further proceedings and to mandate the Parties to return to Status Quo Ante until the Court decided their petition.

The majority members filed their returns as mandated by the Supreme Court and thus, the Court acknowledged the same in its Opinion. This gave the Court the basis to raise two issues and make determinations thereon:

1. First, does the Court have jurisdiction to determine the matter; and
2. Second, what do Article 33 and Article 49 of the Constitution mean?

1.4. ANALYSIS OF THE SUPREME COURT'S OPINION AND JUDGMENT

It is relevant to note that the Court acted on a portion of the request of the Petitioners; that is, prior to its final determination of the matter, the Court granted the request to order a stay and for all parties to return to status quo ante. My reading of the Court's silence on this matter in its Opinion is that the parties obliged accordingly. On the contrary however, the Court did not pass on the other requests of the petitioners or declare any of the actions complained of unconstitutional or illegal. My reading of the Court not making any determination on those requests is that they did not meet the Court's standard for determination, as was the case with placing the stay order. Indeed, the Court opined that "it need not pass on every issue raised in a bill of exceptions or the briefs filed by the parties, but only those that are germane to the determination of a case." The Court was clear that as to those issues which related to the several requests made or the prayers of the petitioners, it (the Court) did not believe that they were germane to the disposition of the matter before the Court. The refusal of the Court to deal with the mentioned requests can legally be said to be a denial of the requests. But this Legal Opinion shall not dwell on those matters as the Court itself did not believe them to be important to warrant the attention of the Court.

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The Court then proceeded to state the two issues it considered germane to the case, ignoring completely all of the issues and prayers of the petitioners except for the two issues stated and addressed by the Court.

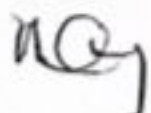
The first issue which the Court deemed important to address was whether it had jurisdiction to entertain the petition before it. The Court determined that it had jurisdiction to determine the controversy between the two Parties. This is the crux of that legal determination: that a court must first determine that it is legally qualified to hear and determine a controversy before it proceeds to do so. In my opinion, based on precedents, the Court rightly determined that it had the authority to hear and determine the petition.

The second issue which the Court felt was germane to the determination of the case was "what is the interpretation of Article 33 and Article 49 of the Constitution." Having identified the issue, the Court then made several observations on the procedures for legislative hearing, including in particular, obtaining a quorum, which is the essence of Article 33 of the Constitution. On that issue, the Court was clear and emphatic and laid out the criteria and elements on how a legislative sitting is constitutional and legal. My observation, from a reading of the Supreme Court's Opinion, is that the Court laid down four criteria or conditions as the foundation for any sitting of the Legislature to be constitutional and legal. The four conditions are:

1. A quorum must be present.
2. The Presiding Officer must have taken the Chair.
3. The Sergeant-At-Arms shall cry the commencement of the day's Session.
4. Thereafter, the Chaplain shall offer prayers.

From the criteria stated, the following question serves to resolve whether the majority sitting was legal and constitutional.

1. Was there a quorum?
2. Was the Chair available and did the Presiding Officer take the Chair?
3. Did the Sergeant-At-Arms cry the commencement of the Day's Session?
4. Were prayers offered after the crying of the day's Session, and by whom were they offered?



1.5 LEGAL OPINION

In regard to the element or criteria for a quorum of the House, the Court quoted two sources: (1) Article 33 of the Constitution; (2) Rules 7, 8, 12 and 13 of the Rules of the House. At page 33 of the Opinion, the Court quoted the relevant part of Article 33 of the Constitution, as follows:

“... a simple majority of each House shall constitute a quorum for the transaction of business...”

On the same page, the Court quoted from the Rules of the House, as follows:

“a quorum shall consist of simple majority of the members of the Honorable House of Representatives which shall be necessary for the transaction of business...”

In both instances, the Court was clear that a simple majority constituted a quorum for the transaction of business. Here is how the Supreme Court framed its position on the issue: *“it is our opinion that the framers of the Constitution in crafting the Article 33 set a simple majority as the quorum for the transaction of business in anticipation that not every single member of the House of Representatives would be present at every sitting of the House of Representatives; that there would be instances where some members of the House would be absent from work due to personal, health or official reason; and that the work of the House will not be stalled due to the absence of a few members.”* Thus, under the authority of the provisions of the Constitution and the Rules of the House of Representatives, quoted by the Court, the Speaker could not convene a session for the conduct of business of the House since there was never a simple majority quorum present for the conduct of such business. On the other hand, the majority membership sitting, having exceeded the simple majority required by the Constitution and the Rules of the House, clearly met the criteria set out by the Constitution and the Rules of the House for a quorum. But equally important for this opinion is that the majority membership satisfied the criteria laid out by the Court.

It is further important to note that the Court did not address any issue of venue, and I believe correctly so, since the Constitution itself does not prescribe a particular venue for the members of the House of Representatives to meet for Session; to do so, in the wisdom of the framers of the Constitution, I believe, would have inhibited any Session being held in the event the particular venue was not available for any number of reasons. Nor is there any provision in the Constitution that a majority of the members of the House of Representatives must assemble where the Speaker is. They could assemble at any venue as deemed convenient for the conduct of business and the

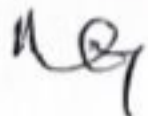
Speaker would be at liberty to preside over such a meeting or, in his absence, the Deputy Speaker is clothed with the authority to preside at the meeting.

Thus, on the second question as to whether there was a Chair available, my findings are that there was a Chair and that the Deputy Speaker, as the Presiding Officer at the majority quorum prescribed by the Constitution and the Rules of the House of Representatives, did take the Chair, given the absence of the Speaker. In the instant case, at the meeting of the quorum required by law, the Presiding Officer was the Deputy Speaker, the Speaker not being available or present where a majority of the House membership had assembled for the conduct of business. This is how the Supreme Court quoted the Rules of the House in support of the necessity of a session or the process leading to a legal session being conducted of the House, presided over by a presiding officer, a quorum being present for the conduct of business:

"Upon a quorum being present and the Presiding Officer having taken the Chair, the Sergeant-At-Arms shall cry for the commencement of the day's Session, following which the Chaplain shall offer prayers."

I am of the considered Legal Opinion that a quorum level having been met for the transaction of business, and the Court having said that, per the Constitution, the Speaker shall preside at the meeting, and in his absence the Deputy Speaker shall preside, and the Deputy Speaker being present at the meeting whereat there was a quorum, and in the absence of the Speaker at such meeting at which a quorum was present, he, the Deputy Speaker could legally and constitutionally preside over the meeting for the transaction of the business of the House, pending the Speaker joining the meeting if he so desired. To take an opposite position would mean that the House could not hold any meeting as long as the Speaker was absent, no matter how near he may be within the vicinity of the meeting of the House where a quorum was present for the conduct of business. I do not believe that the framers of the Constitution could have envisioned that the House would be prevented from conducting business although it had a quorum simply because the Speaker decided, for whatever reason, that he would not attend the meeting.

I am also of the Legal Opinion that not only was such a view not within the contemplation of the framers of the Constitution, but that to subscribe to such view would mean that a Speaker could absent himself or herself from a quorum meeting of the House indefinitely, although just nearby (few yards or a room away from the meeting venue), and there could be no transaction of business of the House for the entire term of the House. I am also of the opinion that the Supreme Court did not subscribe to such theory, for it recognized that where a quorum is present and the Speaker is



absent, the House can proceed with its business under the gavel of the Deputy Speaker. I do not believe that such a situation was within the contemplation of the framers of the Constitution. I also do not believe that the framers contemplated that the Speaker, because he is stated as a presiding officer, could insist that the quorum of the House membership should sit where he sat or a meeting, although having the constitutional quorum, would not be held except at a place designated by him. Neither the Constitution nor any statute should be interpreted in such a manner to lead to absurd outcomes. And I am of the belief that this too may have motivated the Court to espouse that actions by and parties running contrary to Articles 33 and 49 are ultra vires.

I am of the further Legal Opinion that the other two criteria set out in the Supreme Court's Opinion were met and hence, that the sitting of the majority quorum of the House was legal and constitutional. I am informed that at each sitting of the majority constituting the quorum of the House, the Sergeant-At-Arms was present and cried the commencement of the day's Session; and further, that not only was the Chaplin of the House present but that he offered prayers after the crying of the commencement of the day's Session. If in such circumstances, the Speaker elected not to be present at the majority quorum of the House, it was legal and as provided for both by the Constitution and the Rules of the House, for the Deputy Speaker to preside over the meeting and the business of the House at such meeting.

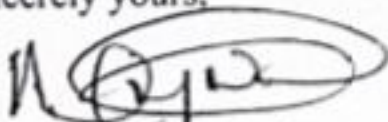
1.6 CONCLUSION

My reading of the Court's Opinion and the analysis made above, dictate what constitutes a valid, legal and constitutional Plenary of the House of Representatives, as quoted in the Court's opinion, bring me to the conclusion that the majority members of the House of Representatives met the constitutional requirements explicated by the Court to hold Session and take decisions consistent with the laws of the Country and the Rules of the House of Representatives.

Therefore, I am of the considered opinion and the law supports my opinion, that the budgetary process can be legally carried out by the majority members provided they meet the same standards laid out by the Supreme Court's opinion, forming an integral part of my opinion, and that any decision therefrom is constitutional, legal and valid.

Kind regards,

Sincerely yours,



Cllr. N. Oswald Tweh

MINISTER OF JUSTICE/ATTORNEY GENERAL