



STATE OF OREGON
LEGISLATIVE COUNSEL COMMITTEE

February 28, 2020

Representative Tina Kotek
Speaker of the House
900 Court Street NE Rm269
Salem OR 97301

Re: Article IV, section 9, of the Oregon Constitution

Dear Speaker Kotek:

You asked whether Article IV, section 9, of the Oregon Constitution, prevents the House Committee on Rules from issuing subpoenas directing the absent members of the House of Representatives to appear at the Rules Committee during the legislative session. The answer is no.

Article IV, section 9, of the Oregon Constitution, provides that representatives “shall not be subject to civil process during the session of the Legislative Assembly. . . .” The Oregon Supreme Court has recognized that the privilege against civil process is a protection afforded to legislators only to the extent necessary to perform legislative functions. *State v. Babson*, 355 Or. 383, 419 (2014). It follows that the privilege to be free from civil process is unlikely to be able to be asserted in order to avoid performing legislative functions. This conclusion aligns with the rule that has developed in other states. *See James v. Powell*, 26 A.D.2d 295, 297 (N.Y. App. Div. 1966) (In case regarding subpoena issued to congressperson, “The purpose of the exemption is not for the benefit or even the convenience of the individual legislators. It is to prevent interference with the legislative process.”); *see also* 5 Am. Jur.2d. *Arrest* §108 “a legislator’s privilege against arrest cannot be asserted against the legislature itself.”; *Mason’s Manual* §568(1) (legislator privilege from arrest necessary to ensure normal functioning of legislative body).

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Very truly yours,

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