

RULE 9 - CHAMBER PROTOCOL

9.2 - 1. MANNER BY WHICH BUSINESS IS CONDUCTED ON HOUSE FLOOR

Rule – House Rule 9.2, paragraph (a) states in part that, “While in the [House] Chamber, the Presiding Officer shall preserve order and decorum...”

History - Representative Toure objected to the decision of the Presiding Officer that motions had to be scheduled through the Floor Leader.

The Presiding Officer ruled that the Floor Leader is charged by the Speaker with setting the agenda for the business of the House for every legislative day. Any motion that puts new business before the House must go through the Floor Leader or it is out of order. The agenda for the Floor and introducing new business is within the exclusive authority of the Floor Leader.

Okla. H. Jour., 1175, 1176, 50th Leg., 1st Reg. Sess. (2005); *Daily H. Sess. Dig. Rec.*, 50th Leg., 1st Reg. Sess. Track 10:06, 6:10-11:04 (April 7, 2005).

Ruling - It shall be the decision of the Chair that the phrase “the Presiding Officer shall preserve order and decorum” contained in House Rule 9.2(a) shall be interpreted to mean that all motions affecting order and business of the day must first be presented to the Majority Floor Leader before the member desiring to make the motion will be recognized by the Presiding Officer.

Reasoning - In general terms, every legislative body must have some expression of procedural rules in order that business pending before the body may receive proper contemplation and consideration. Without clearly defined rules, the will of

the majority cannot be determined and presented in a coherent manner,¹ the rights of the minority are not protected and the majority is not protected from obstructive tactics on the part of the minority.²

In Oklahoma, the power to regulate and order the deliberative process is left to the discretion of the respective houses of the legislature under Article V, Section 30 of the Oklahoma Constitution. Specifically, Article V, Section 30 permits each house to determine its own rules. On this basis, the Oklahoma House of Representatives passed its own set of procedural rules on February 7, 2005.³

Before examining the relevant rules, it must be noted that while the Speaker may honor the House custom of delegating the scheduling of floor action to the Majority Floor Leader, the authority of the Speaker is not absolute. In this situation, the Speaker’s specific decision to require that all motions affecting order and introduction of new business be scheduled through the Floor Leader is subject to House Rule 9.2(e) which provides a means of appeal of the Chair’s ruling.

For the purposes of this case, the question of order is addressed several ways under House Rules. Rules 1.2(a), and 9.2(a) charge the Speaker or the Speaker’s designee in the Chair with the task of actively maintaining order and decorum. Additionally, Rule 8.1(a), implies the general framework for the daily order of business. Rules 10.1 and 10.2 govern the order of presentation of motions.

Under House Rules 1.2(a) and 9.2(a), the Presiding Officer is tasked with preserving

¹ MASON’S MANUAL OF LEGISLATIVE PROCEDURE 9 § 1(1) (National Conference of State Legislatures 2000).

² MASON’S MANUAL OF LEGISLATIVE PROCEDURE 10 § 1(3) (National Conference of State Legislatures 2000).

³ *H. Jour.*, 57, 50th Leg, 1st Reg. Sess. (2005).

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“order and decorum” in the House. When Rules 1.2(a) and 9.2(a) are read in conjunction with Rule 9.1 which empowers the Speaker to interpret the House Rules in all deliberations, it becomes clear that it is entirely appropriate for the Speaker to interpret the mandate of Rule 9.2(a) to mean that all motions affecting order and business of the day must go through the Majority Floor Leader.

The responsibility of the presiding officer to maintain order and decorum has existed throughout Oklahoma’s history, first as a territory and later as a state. Such authority can be found in House Rules of the First Session of 1890 Territorial Legislature.⁴ Specifically, Rule 2 of the House of Representatives, First Oklahoma Territorial Legislature, contains the following language, “He [the Speaker] shall preserve order and decorum, and speak to ‘points of order’ in preference to other members...he shall decide questions of order subject to an appeal to the House...”⁵ This authority continued in House Rules throughout the remainder of Oklahoma’s territorial years, continued after statehood and has remained until the present time.

The authority of the Speaker to maintain order is not unique to Oklahoma, but is well established in the principles of general parliamentary procedure. The parliamentary authority, Luther S. Cushing, in his venerable work *Elements of the Law and Practice of Legislative Assemblies of the United States of America* includes among the duties of the presiding officer such provisions as, “To enforce the observance of order and decorum among members, to inform the assembly...in a point of order or practice, to decide in first instance, and subject to the revision of the house, all questions of order, that may arise,

⁴ Okla. Terr. H. *House Rules*, 1st Leg. 2 (1890).

⁵ *Id.*

or be submitted for his decision.”⁶ More recently, *Mason’s Manual of Legislative Procedure* states that the presiding officer shall, “...preserve order and decorum,” and shall “...guide and direct the proceedings of the body...”⁷ All told, general parliamentary authorities, the historical rules of the Oklahoma House of Representatives and current House Rules indicate that the Speaker can and should take the initiative to preserve order in the House by any reasonable means.

House Rule 10.1 establishes which motions receive precedence and can be offered even if unrelated to the business under consideration. House Rule 10.2 provides that motions incidental to the business under consideration may be permitted at the time of consideration of that business. Again, even though it is a fundamental right both under House Rules and general parliamentary law for a member to present any proper proposal for consideration by the body, appropriate timing must be observed.⁸

Finally, in this case where the ruling of the Chair was sustained by the body of the House, the Speaker’s decision that all motions affecting order and business of the day must go through the Majority Floor Leader became ratified as the will of the House.

⁶ CUSHING, LUTHER STEARNS, *ELEMENTS OF THE LAW AND PRACTICE OF LEGISLATIVE ASSEMBLIES OF THE UNITED STATES OF AMERICA* 113 § 291 (Little, Brown and Co. 1856).

⁷ MASON’S MANUAL OF LEGISLATIVE PROCEDURE 416 § 575 (e), (k) (National Conference of State Legislatures 2000).

⁸ MASON’S MANUAL OF LEGISLATIVE PROCEDURE 118 § 155 (1) (National Conference of State Legislatures 2000).

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9.6 - 1. MEMBERS PRESENT IN CHAMBER BUT NOT VOTING MAY BE NAMED UPON CLOSING OF VOTE

Rule – House Rule 9.6, paragraph (a) states in part that, “Every Member shall vote providing the Member is in the Chamber at the time the vote is in progress.”

History - Representative Askins raised a point of order that House Rule 9.6(a) does not contain enforcement authority against Members who were in the Chamber but not voting.

The Presiding Officer ruled that a Member may raise a point of order pursuant to House Rule 9.6(a) against a Member, by name, who was in the Chamber but not voting which motion may be subject to a vote of the body.

Okla. H. Jour., 1599, 1600, 50th Leg., 2nd Reg. Sess. (2006); *Daily H. Sess. Dig. Rec.*, 50th Leg., 2nd Reg. Sess. Track 10:05, 5:25-13:09 (May 19, 2006).

Ruling - It shall be the decision of the Chair that a Member may raise a point of order naming specific Member(s) who were present in the House Chamber upon the closing of a vote, but did not cast their vote. In addition, it is in order for the House to consider a motion offered by a Member requesting that such information be included in the House Journal. Finally, in contrast, the Chair will not hear a motion that does not name offending Members by name due to the fact that such a “blanket” motion might implicate Members who could have been excused for the day or might be outside the House Chamber conducting other business.

Reasoning - The historical roots of House Rule 9.6(a) invite some examination before the parliamentary reasons for the present ruling are discussed. Throughout most of

Oklahoma’s history, the rules of the House contained a provision requiring Members present to vote and included a punitive provision for Members who were present in the Chamber but did not vote. Beginning in the 1931 House rules, a Member who refused to vote was recorded as voting “no.”⁹ Specifically, Section 59 of the 1931 House Rules states in part the following:

Every member shall vote when his name is called...when a member refuses to vote, he shall be recorded as voting “No”.

From the Thirteenth Oklahoma Legislature in 1931 through the beginning of the Forty-Seventh Oklahoma Legislature in 1999, each successive set of House rules contained language requiring that Members present in the Chamber should vote and upon failing to do would be recorded as voting “no.” Near the end of the first regular session of the Forty-Seventh Legislature, the House passed House Resolution 1007 which upon adoption, included an amendment removing the punitive requirement that a Member present in the House Chamber but not voting would be recorded as voting “no.”¹⁰ What remained was a provision identical to the present House Rule 9.6(a) holding that:

*Every Member shall vote providing the Member is in the Chamber at the time the vote is in progress.*¹¹

While it is correct that House rules since April 29, 1999, have not included the punitive requirement that Members present but not voting should automatically be recorded as voting “no,” there is nothing

⁹ *Journal of the House of Representatives*, 13th Leg., 1st Reg. Sess., Jan. 29, 1931, p. 453; *Okla. H. Rules*, § 59 (13th Leg.).

¹⁰ *Journal of the House of Representatives*, 47th Leg., 1st Reg. Sess., April 29, 1999, p. 1380; 1999 Okla. Sess. Laws 2242.

¹¹ *Journal of the House of Representatives*, 47th Leg., 1st Reg. Sess., April 29, 1999, p. 1406; *Okla. H. Rules*, § 14(1)(a) (47th Leg.).

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under the current House rules or general parliamentary law to prevent a Member from raising a point of order for the purpose of pointing out those Members who, being present, did not vote in violation of House Rule 9.6(a). Furthermore, a duly recognized Member after the fact could properly offer a motion requesting that the House Journal name the offending House Members.

Although the current House rules are silent on the question of a motion requesting inclusion of names in the Journal, such a motion is similar to other motions permitted by the Oklahoma House of Representatives. Additionally, under general parliamentary principles, a motion not specifically named by House rules could still pass muster as a proper motion. By definition, a motion is merely a formal statement of a proposal submitted to a legislative body that certain actions be taken or a determination made.¹² There are literally hundreds of motions not listed in the House rules that short of violating other provisions of the House rules, Oklahoma Statutes, the Oklahoma Constitution, federal law or the federal Constitution, would be appropriate for the House to consider.

On a more practical note, a motion to include in the House Journal the names of Members present in the Chamber but not voting upon the close of the vote is a motion subject to motions of higher rank and, as such, would be subject to debate. Importantly, it should be noted that it would not be appropriate for a Member to attempt to specifically name other Members not yet having voted before the close of the vote. The question of how to vote on a matter frequently results in a Member sitting at his or her desk contemplating how to proceed

¹² MASON'S MANUAL OF LEGISLATIVE PROCEDURE 111 § 144(1) (National Conference of State Legislatures 2000); STURGIS STANDARD CODE OF PARLIAMENTARY PROCEDURE, 2nd Ed., 11 Chap. 3 (McGraw-Hill 1966).

until the moment right before the vote is closed. While there is no apparent harm in requesting that the Presiding Officer generally remind Members of their duty to cast a vote, it could be a serious disruption to point out a specific Member who might be quietly deliberating on how he or she should vote immediately before the close of the vote. In conclusion, a motion to list Members by name in the House Journal on the basis of their failure to vote when present should be entertained only immediately after the close of the vote and before the House takes up another order of business.

9.6 - 2. CORRECTION OF VOTE MISTAKENLY CAST ON BEHALF OF MEMBER

Rule – House Rule 9.6, paragraph (e) states that, “The Presiding Officer shall then lock the machine and instruct the Clerk to record the vote. The Clerk shall immediately activate the recording equipment and when the vote is completely recorded, shall advise the Presiding Officer of the result, and the Presiding Officer shall announce the result to the House. No vote may be changed after it has been recorded.”

History – On March 8, 2007, House Bill 2019 upon final passage failed adoption. At that time, Representative Shelton lodged a motion to reconsider the vote whereby HB 2019 failed. On March 13, 2007, Representative Shelton moved to reconsider the final vote on HB 2019. The motion to reconsider prevailed. As such, HB 2019 underwent a second vote on final passage.

During the second vote on final passage, a member who was excused was mistakenly recorded as casting an “aye” vote. After realizing that an excused member had been mistakenly recorded as casting a vote, the House did not change the vote after the vote was closed and recorded.

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Instead, the House voted to suspend House Rule 9.10(a). House Rule 9.10(a) permits only one motion to reconsider the final vote on a bill. Once House Rules were suspended for the purpose of allowing a second motion to reconsider, Representative Shelton offered a second motion to reconsider the final vote on HB 2019 which was adopted. On final passage, HB 2019 was passed without the excused member's vote.

Okla. H. Jour., 766, 861-864, 867-869, 51st Leg., 1st Reg. Sess. (2007); *Daily H. Sess. Dig. Rec.*, 51st Leg., 1st Reg. Sess. Track 10:49; Track 10:50 (March 13, 2007).

9.6 - 3. DIVISION OF THE QUESTION

Rule – House Rule 9.6, paragraph (g) states that, “When a division is requested and ordered, those in the affirmative or the negative, as the case may be, shall cast their votes accordingly...”

History – Representative Morrissette moved to amend House Bill 2242 by striking the title. Prior to consideration of the amendment, Representative Ingmire offered a motion to table the amendment.

Prior to the vote, the Presiding Officer restated the motion to the full House and then proceeded with a viva voce or voice vote. Upon hearing the “yeas” and the “nays,” the Presiding Officer declared the tabling motion to be adopted. After the voice vote was taken and the result declared by the Presiding Officer, Representative Morrissette requested a division of the House. The Presiding Officer declined to order a division.

Representative Morrissette raised a point of order stating that he had requested a division on the tabling motion and as provided in House Rule 9.6(g), the

Presiding Officer should have ordered a division of the question.

The Presiding Officer ruled the point not well taken on the basis of House Rule 9.6(g). Rule 9.6(g) states that a division must be both requested and ordered. In this instance, even though requested, the Presiding Officer had not ordered a division. Representative Morrissette appealed the ruling of the Chair which was upheld by the House upon roll call.

Ruling– It shall be the decision of the Chair that under House Rule 9.6(g), it is within the sole discretion of the Presiding Officer whether or not to order a division on a question pending before the House.

Okla. H. Jour., 565, 51st Leg., 2nd Reg. Sess. (2008); *Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:07, 11:15-20:17 (March 3, 2008).

Reasoning – The usual way to vote is by viva voce. This method is employed by the Presiding Officer because it is the fastest way to settle questions pending before the House. Many questions considered by the House are routine and easily attract large majorities.¹³

The general rule as stated by *Mason's Manual of Legislative Procedure* and other parliamentary authorities is that a timely request for a division should be granted by the Presiding Officer.¹⁴ However, as

¹³ MASON'S MANUAL OF LEGISLATIVE PROCEDURE 374 § 532(1) (National Conference of State Legislatures 2000).

¹⁴ MASON'S MANUAL OF LEGISLATIVE PROCEDURE 376 § 532 (7) (National Conference of State Legislatures 2000); STURGIS STANDARD CODE OF PARLIAMENTARY PROCEDURE, 2nd Ed., 141 Chap. 17 (McGraw-Hill 1966); CUSHING, LUTHER STEARNS, ELEMENTS OF THE LAW AND PRACTICE OF LEGISLATIVE ASSEMBLIES OF THE UNITED STATES OF AMERICA 698 § 1798 (Little, Brown and Co. 1856). THOMAS

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permitted by the Oklahoma Constitution,¹⁵ the Oklahoma House of Representatives has adopted a rule which grants greater discretion to the Presiding Officer.¹⁶

The discretionary authority of the Presiding Officer to decide whether or not to order a division is a long-standing rule which the Oklahoma House first adopted in 1975 for the Thirty-Fifth Oklahoma Legislature.¹⁷ While no legislative history or record of debate exists relevant to the original adoption of this provision, the rule on its face is designed to prevent one or two members from wasting the body's time with a request for a division when it is apparent to the Presiding Officer that the motion under consideration clearly passed in the affirmative or in the negative. As always, the Presiding Officer should exercise great care when judging the "ayes" and the "nays" and if in doubt, should order a division whether requested or not.¹⁸

9.10 - 1. ELECTRONIC AVAILABILITY UPON MOTION TO RECONSIDER

Rule – House Rule 9.10, paragraphs (a) through (f) provide the guidelines governing the motion to reconsider the final vote on bills, emergencies and resolutions.

History – Subsequent to a motion to reconsider the vote whereby House Bill 2019 failed adoption, Representative Sullivan raised a point of order regarding whether or not reconsideration of HB 2019 was in order under House Rules due to the fact that the bill under reconsideration was

JEFFERSON, A MANUAL OF PARLIAMENTARY PRACTICE 99 § 41 (Washington City: S.H. Smith, 1801); PETYT, GEORGE, LEX PARLIAMENTARIA, 162 Chap. 15 (London: Tim Goodwin, 1690).

¹⁵ Okla. Const. art. V. § 30

¹⁶ Okla. H. Rules § 9.6 (g) (51st Leg.).

¹⁷ Okla. H. Rules § 13 1(g) (35th Leg.).

¹⁸ MASON'S MANUAL OF LEGISLATIVE PROCEDURE 375 § 532(4) (National Conference of State Legislatures 2000).

not electronically available on the House Floor Calendar.

The Presiding Officer ruled the Sullivan point of order "not well taken" on the basis that the bill under reconsideration was available to the members of the House on the Legislature's electronic bill tracking system, *BTOonline*. As such, the members had access to the bill even if the bill no longer was available on the House Floor Calendar.

Daily H. Sess. Dig. Rec., 51st Leg., 1st Reg. Sess. Track 10:44, 9:12-11:43 (March 13, 2007).

Ruling – It shall be the decision of the Chair that House Rule 9.10 shall be interpreted to mean that a bill may be taken up on the House Floor for reconsideration whether or not it is available on the House Floor Calendar if it is available from some other source such as *BTOonline*.

9.10 - 2. CONSIDERATION OF OTHER BUSINESS PRIOR TO RECONSIDERATION NOTICE

Rule – House Rule 9.10, paragraph (a) states in part that, "The final vote on Third Reading...on any bill or joint resolution, or on the Emergency Section thereof...may be reconsidered only if a Member serves notice immediately after such final vote is taken, prior to the consideration of any other business..."

History – Representative Covey attempted to serve notice, or "lodge a motion," that on some future legislative date he might desire to offer a motion to reconsider the vote by which House Bill 2561 passed the full House.

Referring to House Rule 9.10(a), the Presiding Officer ruled the attempted notice not timely and out of order because Representative Covey had not served notice

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immediately after the vote on “Third Reading” and final passage. Subsequent business had transpired. Specifically, three other House bills, HB 2729, HB 2640 and HB 2764, had been considered and passed by the full House prior to the attempt to serve notice to reconsider HB 2561.

Okla. H. Jour., 716-719, 51st Leg., 2nd Reg. Sess. (2008); *Daily H. Sess. Dig. Rec.*, 51st Leg., 2nd Reg. Sess. Track 10:26, 00:00-06:00 (March 10, 2008).

Ruling – It shall be the decision of the Chair that House Rule 9.10(a) shall be interpreted to mean that “other business” includes consideration of other bills and as such, the Chair will not recognize an attempt to serve notice of reconsideration once other bills have been taken up by the House.