

## 6.11 - 1. (2017) Chair Cannot Determine whether Bill Contains Tax or Fee

Rule – House Rule 6.11, paragraph (c) says:

*The presiding officer shall not entertain points of order or points of inquiry pertaining to whether a bill or joint resolution pending before the House is a revenue-raising measure.*

History – During consideration of House Bill 1844, Representative Perryman raised a point of order as to whether House Bill 1844 constituted a tax or a fee, to which the presiding officer ruled that pursuant to Section 6.11, paragraph (c) of House Rules, the Chair cannot entertain points of order pertaining to whether a bill or joint resolution pending before the House is a revenue-raising measure.

Representative Perryman then raised a point of order as to whether the Chair should announce the majority requirement for passage of House Bill 1844, to which the presiding officer responded and ruled that pursuant to Section 6.11, paragraph (a) of House Rules, a bill is presumed not to be a revenue-raising measure unless it has been designated as a revenue-raising measure by the Majority Floor Leader.<sup>1</sup>

Ruling – It is the ruling of the Chair that the prohibition against entertaining points of order as to whether a bill is a revenue-raising measure also precludes the Chair from determining whether a bill contains a fee or a tax.

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<sup>1</sup> *Okla. H. Jour.*, 520, 56th Leg., 1st Reg. Sess. (March 7, 2017); *Daily H. Sess. Video Rec.*, 56th Leg., 1st Reg. Sess., *HB 1844*, 04:01:53-04:05:08 (March 7, 2017).

Reasoning – Whether a measure contains a fee or a tax<sup>2</sup> is fundamental to whether the bill falls within the purview of Article V, Section 33 of the Oklahoma Constitution, the constitutional provision that provides the specific procedural requirements for considering revenue-raising legislation.<sup>3</sup>

Paragraph (c) of Section 6.11 of House Rules prohibits the presiding officer from entertaining points of order as to whether a bill or joint resolution is a revenue-raising measure. When adopting Section 6.11 in its rules, the House essentially decided that it did not wish for its presiding officers to wade into the highly technical and politically fraught task of determining whether or not a particular bill was a revenue-raising measure.

For the presiding officer to be responsive to a request to determine the existence of a tax versus a fee in a pending measure would be to essentially enter into a determination of whether or not the pending bill was a revenue-raising measure which is prohibited by Section 6.11, paragraph (c) of House Rules.

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<sup>2</sup> *Naifeh v. State ex rel. Oklahoma Tax Commission*, 400 P.3d 759 (2017).

<sup>3</sup> OK CONST V, 33, as amended by State Question No. 640, March 10, 1992.

## 6.11 - 2. (2017) Majority Requirement not Announced unless Measure is Designated as Revenue-raising

Rule – House Rule 6.11, paragraph (c) says:

*The presiding officer shall not entertain points of order or points of inquiry pertaining to whether a bill or joint resolution pending before the House is a revenue-raising measure.*

History – During consideration of House Bill 1844, Representative Perryman raised a point of order as to whether House Bill 1844 constituted a tax or a fee, to which the presiding officer ruled that pursuant to Section 6.11, paragraph (c) of House Rules, the Chair cannot entertain points of order pertaining to whether a bill or joint resolution pending before the House is a revenue-raising measure.

Representative Perryman then raised a point of order as to whether the Chair should announce the majority requirement for passage of House Bill 1844, to which the presiding officer responded and ruled that pursuant to Section 6.11, paragraph (a) of House Rules, a bill is presumed not to be a revenue-raising measure unless it has been designated as a revenue-raising measure by the Majority Floor Leader.<sup>1</sup>

Ruling – It is the ruling of the Chair that the presiding officer will not announce the majority requirement for passage unless the measure was previously designated as a revenue-raising measure by the Majority Floor Leader.

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<sup>1</sup> *Okla. H. Jour.*, 520, 56th Leg., 1st Reg. Sess. (March 7, 2017); *Daily H. Sess. Video Rec.*, 56th Leg., 1st Reg. Sess., *HB 1844*, 04:01:53-04:05:08 (March 7, 2017).

Reasoning – Unless a bill is designated as a revenue-raising measure by the Majority Floor Leader *prior* to being taken up for consideration on the House Floor, it is presumed under the terms of Section 6.11 of House Rules not to be a “revenue-raising” measure within the meaning of Article V, Section 33 of the Oklahoma Constitution.<sup>2</sup>

If a pending bill is not a revenue-raising measure, then there is no need to announce the majority requirement for passage of the measure. The regular or default majority requirement for final passage remains applicable.<sup>3</sup>

A point of order requesting that the Chair announce the majority requirement for passage is constructively a request for a ruling on whether the bill is a revenue-raising measure – an action explicitly prohibited by Section 6.11, paragraph (c) of House Rules. As occurred in this instance, the presiding officer must decline such requests and proceed under the regular procedure for bills or joint resolutions not designated as revenue-raising measures by the Majority Floor Leader.

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<sup>2</sup> OK CONST V, 33, as amended by State Question No. 640, March 10, 1992.

<sup>3</sup> OK CONST V, 34.

## 6.11 - 3. (2017) Questions Directed to Majority Floor Leader as to whether Bill is Revenue-raising Not in Order

Rule – House Rule 6.11, paragraph (a) says:

*A bill or joint resolution under consideration by the House shall be presumed not to be a revenue-raising measure within the meaning of Article V, Section 33 of the Oklahoma Constitution unless the bill or joint resolution has been designated as a revenue-raising measure by the Majority Floor Leader.*

History – During consideration of House Bill 1449, Representative Perryman raised a point of order pursuant to House Rule 6.11 seeking recognition to pose the question to the Majority Floor Leader as to whether House Bill 1449 was a revenue-raising measure pursuant to the Oklahoma Constitution.

The presiding officer stated that pursuant to Section 6.11, paragraph (a) of House Rules, a bill under consideration is presumed not to be a revenue-raising measure unless the Majority Floor Leader designates the bill as a revenue-raising measure and that at this time the Majority Floor Leader had not designated the bill as a revenue-raising measure.

The presiding officer also ruled that questions about the type of bill under consideration should be raised during questions and debate.

Representative Perryman appealed the ruling of the Chair which was upheld by the House upon roll call vote.<sup>1</sup>

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<sup>1</sup> *Okla. H. Jour.*, 530, 56th Leg., 1st Reg. Sess. (March 8, 2017); *Daily H. Sess. Video Rec.*, 56th Leg., 1st Reg. Sess., *HB 1449*, 10:34:36-10:48:43 (March 8, 2017).

**Ruling** – It is the ruling of the Chair that when a bill is not designated as a revenue-raising measure by the Majority Floor Leader, the Chair will not entertain questions directed to the Majority Floor Leader as to whether the bill is a revenue-raising measure.

**Reasoning** – Section 6.11 of the House Rules establishes a presumption that no bill is a revenue-raising measure within the meaning of Article V, Section 33 of the Oklahoma Constitution, unless it is so designated as such by the Majority Floor Leader *prior* to its consideration on the House Floor.

Thus, when the Majority Floor Leader has not designated a bill as a revenue-raising measure, the presiding officer should not entertain questions from other members, directed to the Majority Floor Leader, as to whether the bill in question is or is not in fact a revenue-raising measure. If the Majority Floor Leader did not designate the bill as a “revenue-raising” measure, it is presumed not to be a revenue-raising measure and time should not be consumed pursuing this line of questioning.

Because of the ministerial nature of the Majority Floor Leader’s duty under the rule, the procedural methodology provided in Section 6.11 does not contemplate direct questioning of the Majority Floor Leader regarding the decision to designate (or not designate) a bill as a revenue-raising measure. There is no obligation under the rule to explain or defend why a measure was or was not designated as a revenue-raising measure.

Questions about the type of bill under consideration may be properly directed to the author or presenter of the bill at the appropriate time during consideration or may be raised rhetorically in the course of debate on final passage. Attempts to direct such questions to the Majority Floor Leader should

not be entertained by the presiding officer. The obvious exception to this ruling is an instance where the Majority Floor Leader is the actual member presenting the bill or joint resolution on the House Floor.