

HOUSE PRECEDENTS

9.2 - 5. (2009) INTERRUPTION OF DEBATE NOT PERMITTED FOR MOTION TO ‘LAY THE BILL OVER’

Rule – House Rule 9.2, paragraph (a) states in part:

While in the Chamber, the Presiding Officer shall preserve order and decorum, shall prevent personal reflections or the impugning of the motive of any Member, and shall confine Members in debate to the question under discussion.

History – In the course of debate on passage of House Bill 1823, Representative Morrissette moved to “lay the bill over”. The presiding officer ruled the motion presently out of order because debate was underway but stated that the motion would be recognized at the conclusion of debate.¹

Ruling – It is the ruling of the Chair that a motion to “lay the bill over” or to otherwise temporarily postpone consideration of a measure is not in order during debate on final passage.

Reasoning – In order to promote an orderly debate process, a motion to temporarily postpone consideration of a measure, more commonly expressed as a motion to ‘lay the bill over’, should not be recognized during debate on final passage of a measure. Such a motion would properly be in order when debate is concluded and before the vote on final passage is opened.

¹ *Okla. H. Jour.*, 874, 52nd Leg., 1st Reg. Sess. (March 10, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:23, 7:10-7:54 (March 10, 2009).

9.2 - 6. (2009) POINT OF ORDER PERTAINING TO AN AMENDMENT MUST BE RAISED BEFORE AMENDMENT IS ADOPTED

Rule – House Rule 9.2, paragraph (d) states:

Any Member may rise to a point of order against any other Member when, in the Member's opinion, such Member is proceeding out of order. Such point of order shall be decided by the Presiding Officer without debate.

History – During consideration of House Bill 2090, Representative Kirby moved to amend House Bill 2090 by striking the title. During a division on the question of adopting the amendment to strike title, Representative John Wright raised a point of inquiry as to the lack of a written analysis of the fiscal impact associated with a previously adopted amendment to House Bill 2090 and whether the chairperson of the Appropriations and Budget Committee should weigh in on the existence of a fiscal impact.

The presiding officer ruled the point not well taken because the House had already adopted the amendment in question and the point of order should have been raised during consideration and before adoption of the amendment.²

Ruling – It is the decision of the Chair that a point of order pertaining to an amendment must be raised in a timely manner, meaning that it must be raised before the amendment is adopted by the House.

² *Okla. H. Jour.*, 949, 52nd Leg., 1st Reg. Sess. (March 11, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:53, 7:31-8:13 (March 11, 2009).

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9.2 - 7. (2009) CUSTOMARY DUTIES OF MAJORITY FLOOR LEADER

Rule – House Rule 8.1, paragraph (a) states in relevant part:

The following Order of Business shall be followed each day...

13. *Consideration of Simple and Concurrent Resolutions.*

14. *Messages from the Senate and Senate Amendments to House Bills.*

15. *House and Senate Bills and Joint Resolutions on General Order.*

16. *House and Senate Bills and Joint Resolutions on Third Reading.*

17. *Consideration of Conference Committee Reports.*

18. *House and Senate Bills and Joint Resolutions on Fourth Reading.*

19. *Motions and Notices.*

20. *Unfinished business.*

History – Representative Brown raised a point of inquiry as to what order of business the House would follow throughout the day's session. The Presiding Officer stated that it is the custom of the House for the Majority Floor Leader to establish the daily schedule.³

Ruling – It is the ruling of the Chair that the custom of the House is for the Majority Floor Leader to establish the

³ *Okla. H. Jour.*, 959, 960, 52nd Leg., 1st Reg. Sess. (March 12, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:02, 0:08-0:59, 3:26-3:51 (March 12, 2009).

daily schedule of business for the House of Representatives.

Reasoning – It is the custom of the House to delegate scheduling of floor action and each legislative day's agenda to the Majority Floor Leader.⁴ This custom has its origins in the Speaker's authority to preserve order in the House by any reasonable means.⁵ The Speaker's authority to maintain order flows from both the House Rules⁶ and from long established practice.⁷ As the Speaker's appointee, the Majority Floor Leader's authority to manage the legislative schedule is derived from the Speaker's authority to maintain order in the House of Representatives.

9.2 - 8. (2009) REGULATION OF QUESTIONS AND ANSWERS

Rule – House Rule 9.2, paragraph (a) states in part:

While in the Chamber, the Presiding Officer shall preserve order and decorum...

History – During consideration of House Concurrent Resolution 1016, Representative Morrisette raised a point of inquiry as to whether the presiding officer would extend the question and answer period prior to the House proceeding to debate on adoption of the resolution.

The Presiding Officer stated that it is within the prerogative of the Chair to decide how much time will be permitted

⁴ *Prec. Okla. H. of Rep.*, § 9.2(1.), 50th Leg., 1st Reg. Sess. (April 7, 2005).

⁵ *Id.*

⁶ *Okla. H. Rules*, § 1.2 (52nd Leg.); *Okla. H. Rules*, §§ 9.1, 9.2 (52nd Leg.).

⁷ *Okla. Terr. H. House Rules*, 1st Leg. 2 (1890).

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for questions and answers on a measure under consideration by the House. Upon announcement of the presiding officer's ruling, Representative Kiesel appealed the ruling of the Chair. Upon consideration by the full House, the decision of the presiding officer was upheld upon a roll call vote.⁸

Ruling – It is the decision of the Chair that it is the prerogative of the presiding officer, under Rule 9.2, to determine how many individual questions to entertain while a pending question is under consideration.

Reasoning – Under general parliamentary law, it is the duty of the presiding officer to preserve order and decorum and to guide and direct the proceedings of the body, subject to the control and will of the body. Likewise, House Rule 9.2 charges the presiding officer with the duty of preserving order and decorum in the daily sessions of the House.⁹ All the same, adopted House Rules frequently do not address every procedural question that may arise in the context of preserving “order and decorum”. For example, specific questions such as: may the presiding officer limit the number of questions posed to a measure's author on the House floor frequently are not directly addressed in House Rules.

In the case that the House Rules do not address a particular procedural question, what must be done? In reality, much procedure has been and continues to be derived from established customs and usages rather than from adopted rules. When a question arises over something not addressed by a House Rule, the

⁸ *Okla. H. Jour.*, 1180, 1181, 52nd Leg., 1st Reg. Sess. (March 31, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:09, 11:58-17:33 (March 31, 2009).

⁹ *Okla. H. Rules*, § 9.2 (52nd Leg.).

presiding officer may appropriately rely on customs and usages in much the same way he or she would look to adopted House Rules for guidance on questions directly addressed by specific House Rules.

Indeed, when no rule or precedent is on point, the customary practice, usage or precedent of the House governs until the House sets a precedent establishing a different procedure either through a decision of the presiding officer or by the body itself when deciding an appeal.

In the Oklahoma House of Representatives, it has been the practice of the body to permit individual questions directed to a measure's author, subject to recognition and control by the presiding officer. While House Rules do not directly speak to such a practice during Floor consideration, House Rules do address the practice in House committees.

The “committee rule” explicitly provides a measure's author or an amendment's presenter the opportunity to receive and answer questions in House committees.¹⁰ This privilege or entitlement customarily has been tempered by two controlling yet unequal factors: the chairperson's nearly unqualified authority to grant or not grant recognition and the willingness of the presenting member to yield to individual questions. Under the committee rule and under the customs and practices of the House, exercise of the former always trumps the willingness of the latter.

While the chairperson should allow members of the committee reasonable opportunity to pose questions, the committee rule does not create an absolute right to ask individual questions in committee. Similarly, on the House Floor

¹⁰ *Okla. H. Rules*, § 7.5(a) (52nd Leg.).

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it is well-established custom and practice for the presiding officer to recognize members for individual questions on a pending question. That being said, this practice owes its existence to authority given to the presiding officer in House Rule 9.2, paragraph (a) to “preserve order and decorum” and the general nature of its mandate allows considerable latitude in interpreting the terms “order and decorum”.

In practice, personal style often comes into play resulting in somewhat different approaches to preserving order during daily floor sessions. Nonetheless, the plenary nature of the presiding officer’s authority allows exercise of direct control over how many members are recognized for questions, how many questions are permitted as well as what limits are ultimately imposed because of repetitive questioning or other types of dilatory activity.

9.2 - 9. (2009) PRESIDING OFFICER MAY DEFER RULING ON POINT OF ORDER

Rule – House Rule 9.2, paragraph (d) states:

Any Member may rise to a point of order against any other Member when, in the Member's opinion, such Member is proceeding out of order. Such point of order shall be decided by the Presiding Officer without debate.

History – During consideration of the Conference Committee Report on Senate Bill 244, Representative Reynolds requested a ruling of the Chair as to whether the subject of the conference committee report was limited to matters germane to Senate Bill 244 as required by House Rule 7.15(a).

Representative Blackwell then made what amounted to a unanimous consent request to temporarily postpone consideration of the conference committee report. Representative Reynolds raised a point of order as to whether it was in order for the presiding officer to defer ruling on a point of order. The presiding officer stated that it is the prerogative of the Chair to defer ruling on a point of order. The conference committee report on Senate Bill 244 was temporarily postponed.¹¹

Ruling – It is the decision of the Chair that it is the prerogative of the presiding officer to defer ruling on a point of order.

9.4 - 1. (2009) DEBATE MAY BE EXTENDED BUT NOT LIMITED

Rule – House Rule 9.4, paragraph (b) states:

When a debatable question is before the House, any Member may move that the time for debate on such question be extended. For adoption, such motion need only receive a majority of those voting, a quorum being present.

History – The Conference Committee Report on Senate Bill 153 was considered and adopted. Upon fourth reading and final passage of Senate Bill 153, Representative John Wright moved that debate time be effectively limited to five (5) minutes to the opponents of the question and five (5) minutes to the proponents of the question.

¹¹ *Okla. H. Jour.*, 1893, 52nd Leg., 1st Reg. Sess. (May 21, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:78, 0:47-4:10 (May 21, 2009); see also MASON’S MANUAL OF LEGISLATIVE PROCEDURE 188, 189 § 244 (National Conference of State Legislatures 2000).

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The presiding officer ruled that pursuant to House Rule 9.4, paragraph (b), debate time may be extended but cannot be limited, and as such, ruled the motion out of order. Representative John Wright then moved to suspend House Rule 9.4 for purposes of limiting debate to five (5) minutes a side, which motion was declared adopted upon a roll call vote.¹²

Ruling – It is the decision of the Chair that under the terms of House Rule 9.4, paragraph (b), debate may be extended by motion but may not undergo additional time restrictions without suspension of the rule.

9.7 - 1. (2009) POINT OF ORDER MUST PERTAIN TO VOTE ITSELF ONCE VOTE IS OPEN

Rule – House Rule 9.7, paragraph (a) states:

While a vote is in progress and until the completion of a vote, and the announcement of the result, no Member shall be recognized and no other business shall be transacted.

History – During consideration of House Bill 2090, Representative Proctor moved to amend House Bill 2090. During a division on the question of adopting the amendment, Representative Hickman raised a point of order and requested a ruling of the Chair as to whether the subject of the amendment was germane to the subject of House Bill 2090. Representative McMullen then raised a point of order as to whether the question of germaneness should have been posed

¹² *Okla. H. Jour.*, 1944, 1945, 52nd Leg., 1st Reg. Sess. (May 22, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:59, 10:45-16:40 (May 22, 2009).

prior to opening of the vote on adoption of the amendment. The presiding officer ruled Representative McMullen's point of order to be well taken. Representative Proctor pressed adoption of the amendment which was adopted upon a roll call vote.¹³

Ruling – It is the ruling of the Chair that once a vote is open, no point of order shall be recognized during the vote unless it pertains directly to the conduct of the vote itself.

9.7 - 2. (2009) MOTION TO TABLE NOT IN ORDER ONCE VOTE IS ORDERED

Rule – House Rule 9.7, paragraph (a) states:

While a vote is in progress and until the completion of a vote, and the announcement of the result, no Member shall be recognized and no other business shall be transacted.

History – During consideration of Senate Bill 834, Representative Jones moved to amend Senate Bill 834 with a floor substitute in lieu of the bill itself. In the course of presenting the floor substitute to the House, Representative Jones moved to advance the question. After a division was ordered by the presiding officer on whether to advance the question, Representative Inman moved to table Representative Jones' motion to advance the question.

¹³ *Okla. H. Jour.*, 949, 52nd Leg., 1st Reg. Sess. (March 11, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:53, 4:59-6:41 (March 11, 2009); see also *Okla. H. Jour.*, 1542, 52nd Leg., 1st Reg. Sess. (April 27, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:14, 2:05-3:12 (April 27, 2009).

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The presiding officer ruled the motion to table out of order because the division on Representative Jones' motion had already been ordered and was underway. Representative Jones pressed his motion to advance the question which was adopted upon a roll call vote.¹⁴

Ruling – It is the ruling of the Chair that once a vote is ordered on a question by the presiding officer, a motion to table is not in order.

9.8 - 1. (2009) PREVIOUS QUESTION APPLICABLE ONLY TO IMMEDIATELY PENDING QUESTION

Rule – House Rule 9.8 states in relevant part:

When a debatable question is before the House, any Member may move the Previous Question...If the motion for the Previous Question passes, the pending question shall be put immediately and no Member shall be heard to debate it further or seek to amend it.

History – During consideration of the Conference Committee Report on Senate Bill 810, Representative Terrill moved adoption of the conference committee report. Representative Sullivan then moved to put the previous question on the question of passing Senate Bill 810 itself.

The presiding officer ruled that pursuant to House Rule 9.8, the motion to put the previous question is only applicable to the pending question and that the question pending before the House was adoption of the conference committee report not final

¹⁴ *Okla. H. Jour.*, 1346, 1347, 52nd Leg., 1st Reg. Sess. (April 15, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:33, 28:25-29:56 (April 15, 2009).

passage of Senate Bill 810. As such, the presiding officer did not entertain the motion to put the previous question on the question of passing the bill itself.¹⁵

Ruling – It is the decision of the Chair that the motion to put the previous question is only applicable to the question immediately pending before the House.

9.10 - 3. (2009) NOTICE TO RECONSIDER MEASURE ITSELF MAY NOT BE LODGED ONCE EMERGENCY IS UNDER CONSIDERATION

Rule – House Rule 9.10, paragraph (a) states in part:

The final vote on Third Reading or Fourth 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, of said Member's intention to present a motion to reconsider such action...

History – Senate Bill 239 was read for the third time and passed by the House. On the question of adoption of the emergency clause, the emergency failed. Representative Sullivan immediately served notice of his intention to reconsider the vote whereby the emergency failed.

After Representative Sullivan served notice of his intention to reconsider the vote on the emergency clause, Representative Reynolds served notice of his intention to reconsider the vote whereby Senate Bill 239 passed the

¹⁵ *Okla. H. Jour.*, 1824, 52nd Leg., 1st Reg. Sess. (May 20, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:52, 39:45-41:38 (May 20, 2009).

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House. The presiding officer ruled that Representative Reynolds' attempt to serve notice on the bill itself was out of order at that time because the House had already moved on to the next order of business when it took up consideration of the emergency clause.¹⁶

Ruling – It is the ruling of the Chair that once the House has moved from consideration of a measure to consideration of the emergency clause, notice to reconsider the measure itself may not be lodged.

Reasoning – In order to promote orderliness within the legislative process, consideration of a measure and consideration of a measure's emergency clause should constitute two distinct orders of business. This means that notice to reconsider the measure itself must be lodged prior to the House taking up the emergency clause for consideration. This approach reflects the guidance provided in House Rule 8.18 which says: "the emergency section shall constitute a separate question."

9.10 - 4. (2009) USE AND DISTINCTION OF MOTION TO RESCIND

Rule – House Rule 9.10, paragraph (f) states:

¹⁶ *Okla. H. Jour.*, 1264, 52nd Leg., 1st Reg. Sess. (April 9, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:14, 47:45-49:40 (April 9, 2009); affirmed at *Okla. H. Jour.*, 1305, 1306, 52nd Leg., 1st Reg. Sess. (April 14, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:21, 00:00-6:31 (April 14, 2009); *Okla. H. Jour.*, 1910, 52nd Leg., 1st Reg. Sess. (May 22, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:19, 4:42-6:15 (May 22, 2009).

Except as otherwise specifically provided in these Rules, no question shall be subject to reconsideration in the House.

History – During consideration of the Conference Committee Report on Senate Bill 810, Representative Schwartz moved adoption of the conference committee report which failed upon a division of the question. Representative Terrill attempted to serve notice to reconsider the vote whereby the conference committee report failed of adoption.

The presiding officer ruled the motion out of order pursuant to House Rule 9.10(f). Representative Terrill then moved to reject the conference committee report and to request further conference with the Senate. Representative Sullivan moved to table Representative Terrill's motion to reject the conference committee report. The motion to table failed upon a division of the question. Representative Terrill withdrew his motion to reject the Conference Committee Report on Senate Bill 810.

Representative Terrill then moved to rescind the vote whereby adoption of the conference committee report had failed. The motion to rescind the vote was adopted upon a division of the question. Representative Terrill then, for a second time, moved to adopt the Conference Committee Report on Senate Bill 810.

Representative Reynolds raised a point of inquiry as to whether the second motion to adopt the Conference Committee Report on Senate Bill 810 was dilatory because the question of adopting the conference committee report had been previously considered and defeated by the House.

The presiding officer ruled that because the first vote to adopt the conference

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committee report, which had failed, had been rescinded, further consideration of the conference committee report was in order.¹⁷

Ruling – It is the decision of the Chair that once a vote is rescinded, it is as if the vote never occurred and the question may be once again considered by the House.

Reasoning – While the motion to reconsider is similar in result to the motion to rescind, there are several characteristics distinguishing the one from the other. The motion to reconsider is governed by House Rules 8.13 and 9.10. Rule 8.13 is applicable to floor amendments and Rule 9.10 to bills and resolutions on final passage.

A successful motion to reconsider means that the vote is literally retaken on the amendment or measure in question.¹⁸ In contrast, a successful motion to rescind means the vote is considered stricken or made ineffective as if it had never before been taken, as if the question were being considered for the first time.

When a motion to reconsider is lodged it has the effect of suspending the action previously taken until the reconsideration is decided by the House or until the time to reconsider expires by operation of House Rules.¹⁹ On the other hand, the motion to rescind does not suspend actions previously taken. It is used to undo actions that are not susceptible to reconsideration either because a motion to

reconsider is prohibited by House Rules or because the time to do so has expired. When a question may be reached by a motion to reconsider under House Rules, a motion to rescind is not in order.²⁰

¹⁷ *Okla. H. Jour.*, 1823-1826, 52nd Leg., 1st Reg. Sess. (May 20, 2009); *Daily H. Sess. Dig. Rec.*, 52nd Leg., 1st Reg. Sess. Track 10:52, 35:06-48:46 (May 20, 2009).

¹⁸ MASON'S MANUAL OF LEGISLATIVE PROCEDURE 317 § 468(2) (National Conference of State Legislatures 2000).

¹⁹ *Id.* at 315-316 § 467; *Okla. H. Rules*, §§ 8.13, 9.10 (52nd Leg.).

²⁰ MASON'S MANUAL OF LEGISLATIVE PROCEDURE 321 § 480 (National Conference of State Legislatures 2000).