

TEXAS HOUSE PRACTICE

Containing the Standing Rules and Precedents of the Texas House of Representatives, together with Practice Notes, Congressional Rules and Precedents, and references to provisions of the Texas Constitution and laws, Opinions of the Texas Attorney General and decisions of the Supreme Court, the Court of Criminal Appeals and the Courts of Appeals of Texas.



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THIRD EDITION, NEWLY REVISED FOR THE EIGHTY-FIFTH LEGISLATURE



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TEXAS HOUSE PRACTICE
Third Edition, Newly Revised

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RULE 1. DUTIES AND RIGHTS OF THE SPEAKER

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Chapter A. Duties As Presiding Officer

[¶ 4] **Sec. 1. ENFORCEMENT OF THE RULES.** The speaker shall enforce, apply, and interpret the rules of the house in all deliberations of the house and shall enforce the legislative rules prescribed by the statutes and the Constitution of Texas.

CROSS-REFERENCES

Constitutional designation of Speaker, art. III, § 9.
Statement of Authorization and Precedence, [¶ 1].
Strict enforcement of the Rules, Rule 7, § 40.

PRACTICE NOTE

[¶ 4.1] **ENFORCEMENT OF PROCEDURAL RULES PRESCRIBED IN STATUTE.** — Enforcement of procedural rules contained in statute presents a biennial issue. This Rule plainly requires the Speaker to enforce procedural rules prescribed by statute, the “Statement of Authorization and Precedence” notwithstanding. However, Mr. Speaker Craddick declined to enforce those statutory rules. See [¶ 4.2]. Those supporting that position point both to the Statement and to the Constitutional language authorizing the House “to determine the rules of its proceedings.” See [¶ 1, 991]. This is a rather simplistic position that ignores the nature of those statutory rules. It is certainly true that one House may not

bind another. See 5 Hinds § 6747. The procedural rules in statute are an exercise of the House’s rule-making power; while those rules cannot bind the House without its permission, they are effective until the House decides they do not. This Rule in effect says that the House has decided that those rules apply—at least until the next House adopts its Rules. This section only authorizes the Speaker to enforce procedural rules prescribed by statute; enforcement of substantive statutory provisions are left to the courts. See [¶ 4.3-4.4]. Finally, if not otherwise clear in this Note, the Speaker certainly enforces the procedural rules prescribed by the Constitution. See, e.g., [¶ 24, 32, 826].

HOUSE PRECEDENTS

[¶ 4.2] **CASE WHERE CHAIR DECLINES TO ENFORCE PROCEDURAL RULE PRESCRIBED BY STATUTE.** — The House was considering C.S.H.B. 4,

the omnibus tort reform bill, on second reading.

Mr. Dunnam raised a point of order against further consideration of the bill on the grounds that the com-

2429, 2646, 2762, 2 Hinds §§ 1425-1428;

2. whether a motion is dilatory, 5 Hinds § 5731;

3. refusing a recapitulation of a vote, 8 Cannon § 3128;

4. responses to parliamentary inquires, 8 Cannon § 3457, 5 Hinds § 6955;

5. determination of vote counts on demands for record votes or quorum counts, Deschler Ch. 31 §§ 13.12-13.13

Finally, an appeal may not be taken from a ruling of the Speaker declining to rule upon the constitutionality of legislation. Deschler Ch. 31 § 13.1.

[¶ 53] APPEALS; MAY NOT LIE IF EFFECT WOULD CHANGE HOUSE RULE. — An appeal may not lie if sustaining the Speaker's decision permits a direct change in a House Rule, thus allowing the Speaker to exercise discretionary or interpretive authority where none previously existed. Deschler Ch. 31 § 13.5.

[¶ 54] APPEALS; MOTIONS THAT MAY BE OFFERED WHILE PENDING. — While an appeal is pending, the following motions may be offered: postpone the appeal to a day certain, 8 Cannon § 2613, and the previous question, 5 Hinds § 6947. After debate, a motion to table is in order, Deschler Ch. 31 § 13.15. The motion to reconsider the tabling of an appeal is also in order. Deschler Ch. 31 § 13.16.

[¶ 55] APPEALS; UNTIMELY. — An appeal is not in order:

1. while another appeal is pending, 5 Hinds §§ 6939-6941;

2. on a question on which an appeal has just been decided, 5 Hinds § 6877, 4 Hinds § 3036;

3. during a roll call vote, 5 Hinds § 6051;

4. between the motion to adjourn and the taking of the vote thereon, 5 Hinds § 5361; or

5. if it is dilatory, 8 Cannon § 2822.

An appeal from the decision of the Chair may be entertained during the proceedings to secure a quorum. 6 Cannon § 681, 4 Hinds § 3037.

[¶ 56] APPEALS; VOTING ON. — A ruling is sustained on a majority vote of the House; a tie vote (especially one where the Speaker's vote did not make a tie) also sustains. 5 Hinds § 5686, 4 Hinds § 4569. The Speaker may vote to make or break a tie. 5 Hinds § 5686, 4 Hinds § 4569. He may vote in favor of his own decision. 5 Hinds § 6956.

[¶ 57] APPEALS; WITHDRAWAL. — An appeal may be withdrawn at any time before action is taken by the House. 5 Hinds § 5354. An appeal may not be withdrawn once a record vote is requested. *Id.*

[¶ 57A] SUBSTANTIAL COMPLIANCE; EFFECT OF TYPOGRAPHICAL ERRORS. — A bill with a report that contained information required by the Rules related to Congressional earmarks, limited tax benefits, and limited tariff benefits indicating the information is for another measure (H.R. 3435) but not the measure under consideration (H.R. 3534) does not substantially comply with the Rules and is out of order. U.S. H.R.J., 111th Cong., 2d Sess., § 9720 (2010). [The error was plainly a typographical one as there was no committee report for H.R. 3435, which had been introduced, passed, and signed into law in roughly the span of a week, and all of which occurred before consideration of H.R. 3534.]

MASON'S MANUAL REFERENCES

Presiding officer does not have right to rule upon the constitutionality of bills, §§ 242-1, 578-6.

Presiding officer may speak to a point of order in preference to others, § 582-1.

Presiding officer may state facts, particularly those within his knowledge, for the House's benefit, § 582-1.

Presiding officer not required to decide any point of order not directly presented by proceedings, §540-4.

[¶ 58] **Sec. 10. APPOINTMENT OF SPEAKER PRO TEMPORE AND TEMPORARY CHAIR.** The speaker shall have the right to name any member to perform the duties of the chair and may name a member to serve as speaker pro tempore by delivering a written order to the chief clerk and a copy to the journal clerk. A permanent speaker pro tempore shall, in the absence or inability of the speaker, call the house to order and perform all other duties of the chair in presiding over the deliberations of the house and perform other duties and exercise other responsibilities as may be assigned by the speaker. If the house is not in session, and a permanent speaker pro tempore has not been named, or if the speaker pro tempore is not available or for any reason is not able to function, the speaker may deliver a written order to the chief clerk, with a copy to the journal clerk, naming the member who shall call the house to order and preside during the speaker's absence. The speaker pro tempore shall serve at the pleasure of the speaker.

PRACTICE NOTES

[¶ 58.1] NAMING OF A TEMPORARY CHAIR. — Under current practice and despite the plain language of the Rule, the Speaker does not name the member who shall call the House to order and pre-

side during the Speaker's absence. This failure to follow the Rule does not necessarily render the temporary chair's service subject to a point of order, especially where the House has transacted substantial

business. See [¶ 59.2]. The Rule does not require a written order naming a Member called to the Chair under the first clause of the first sentence and Members may be called to preside during a day's sitting at the Speaker's pleasure.

[¶ 59] SECOND OATH NOT ADMINISTERED. — The Speaker pro tempore of the Texas House does not take a second oath of office as such. The lack of both an election and a second oath explains why the Speaker pro tempore is denied the ability to exercise certain functions of a duly-elected and sworn Speaker. See [¶ 60].

[¶ 59.1] "DEAN OF THE HOUSE". — In the 82d and 83d Legislatures, Mr. Speaker Straus "officially recognized" Mr. Craddick as "Dean of the House" and cited the Housekeeping Resolution as the authority for this recognition. 83 H.J. Reg. 211 (2013); 82 H.J. Reg. 305-306 (2011). Mr. Speaker Straus specified that, "[i]n addition to his duties as an elected Representative, The [sic] Dean of the Texas House:

"1. In addition to and in the absence of the

Speaker shall receive delegations for [sic] other legislative assemblies and other foreign governments; and

"2. Shall be appointed to and serve as chair of each escort committee appointed by the House." 82 H.J. Reg. at 305-306. Mr. Speaker Straus also specified that "during debate, it shall be in order to, if the Dean so chooses, to be referred to as 'Dean'; that the composite photograph reflect Mr. Craddick's status as Dean; that his office sign display the phrase "Office of the Dean of the Texas House of Representatives"; and that the House Parliamentarian, "with the Legislative Reference Library and the Texas Legislative Counsel [sic]," shall compile and publish a history of the Dean. *Id.* Under long-standing practice, the Member with the longest continuous service has always been addressed by the Members as "dean," but there was no formal recognition of the office on the scale contemplated by Mr. Speaker Straus.

HOUSE PRECEDENT

[¶ 59.2] CASE WHERE SPEAKER'S FAILURE TO NAME IN WRITING THE MEMBER TO CONVENE THE HOUSE NOT PREJUDICIAL TO TRANSACTING BUSINESS. — The House met pursuant to an adjournment and was called to order by Mr. Chisum "at the request of the [S]peaker."

Registration was taken, prayer offered, and leaves of absence granted. The House took up a number of ceremonial resolutions under suspensions of the Rules and adopted them before going on the calendar.

The House was considering H.B. 12, relating to the administration of several legislative agencies, on

second reading.

Mr. Mabry raised a point of order against further consideration of the bill on the grounds that the Speaker failed to deliver a written order, as required by the Rule, authorizing Mr. Chisum to convene the House; thus, the House was not properly convened and could not consider the bill.

Overruled (Mr. Speaker Craddick). 78 H.J. 2d C. S. 73-85 (2003).

[Mr. Mabry waited too late; the time to raise the point of order was before the registration; if he could not be heard, it should have been raised immediately after the registration.]

CONGRESSIONAL PRECEDENTS

[¶ 60] SPEAKER PRO TEMPORE. — When the Speaker is absent at a convening he designates a Speaker pro tempore in writing. 2 Hinds §§ 1378, 1401. However, he does not always name in open House the Member whom he calls to the chair temporarily during the day's sitting. 5 Hinds § 1379, 1400. A call of the House may occur with a Speaker pro tempore in the chair. 4 Hinds § 2989. He may issue arrest warrants for absent Members under a call. 50 Cong. Rec. 5498 (1913). Unless authorized by unanimous consent or specific approval by the

House, the Speaker pro tempore may not administer the oath of office to a Member-elect. Deschler Ch. 6, § 12.8. Nor may he appoint conferees. *Id.* at §§ 12.9-12.10. Nor may he spread upon the Journal a veto message. *Id.* at § 12.11.

[¶ 60.1] TEMPORARY CHAIR. — Members of the minority have been called to the Chair on ceremonial occasions. 97 Cong. Rec. 779 (1951); 6 Cannon § 270; 2 Hinds § 1383. But otherwise, they are rarely called. 6 Cannon § 264; 3 Hinds § 2596; 2 Hinds §§ 1382, 1390.

MASON'S MANUAL REFERENCES

House may elect a temporary presiding officer when presiding officers refuse to perform duties, §§ 572-2, 576-1.

House has right to elect a temporary presiding officer of necessity if the duly-authorized presiding officers are absent, § 579-2.

Presiding officer may call another to chair and participate in debate without permission, § 582-2.

[¶ 61] **Sec. 11. EMERGENCY ADJOURNMENT.** In the event of an emergency of such compelling nature that the speaker must adjourn the house without fixing a date and hour of reconvening, the speaker shall have authority to determine the date and hour of reconvening and to notify the members of the house by any means the