



April 19, 2018

Trial Court of the Osage Nation
FILED

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BY JLE

**OPINIONS OF THE ATTORNEY GENERAL
OF THE OSAGE NATION
ONAG-2018-02
(Slip Opinion)¹**

QUESTIONS SUBMITTED BY: The Honorable Raymond W. Red Corn, Acting Principal Chief of the Osage Nation.²

This Office has received your request for an Official Attorney General Opinion regarding the Enactment of Laws under Article VI, Section 12 of the Constitution of the Osage Nation.

To which you ask:

When the Congress is populated by only eleven members, how many members constitute a majority for the purpose of passing bills or resolutions under Article VI, Section 12 of the Osage Constitution?

I. SHORT ANSWER

Six-member concurrence constitutes a majority for passing bills when there are only eleven members. A "majority of the entire membership" is defined in parliamentary law as a majority of the total number of those who are members of the voting body at the time of the vote. A majority means more than half, which means a majority of Congress with eleven eligible voting members is six. By Congressional Rule, resolutions may be passed by a concurrence of more than half of the Congress members present at a properly convened Congressional session.

II. DISCUSSION

A. BILLS

¹ NOTICE: This opinion is subject to formal revision before official publication. Readers are requested to notify the Office of the Attorney General using the header information, or at AttorneyGeneralOffice@osagenation-nsn.gov, of any typographical or other formal errors, so that corrections may be made prior to official publication.

² Assistant Principal Chief Raymond W. Red Corn is acting as Principal Chief in the temporary absence of Principal Chief Geoffrey Standing Bear, pursuant to Art. VII, Sec. 7 of the Osage Nation Constitution and by Delegation of Authority dated April 5, 2018 signed by Geoffrey Standing Bear.

Article VI, Section 12 of the Osage Nation Constitution states, "No bill shall be passed without the concurrence of a majority of the members of the Osage Nation Congress." The Osage Nation Constitution at Art. VI, Sec.2 establishes Congress as a twelve-member legislative body. Although the Osage Nation Constitution provides a number certain in several Congressional voting requirements, it is inconsistent as to how it refers to the Congressional membership – even switching from "of the members elected to Congress" to "of the membership" within the same section.³

The Constitution directs the Osage Nation Congress "to adopt uniform rules of procedure for conducting the business of Congress." Osage Const., Art.VI, Sec.11. Accordingly, Congress implemented the "Rules of the Osage Congress." Congressional Rules at 5.9.9 states, "A bill requires a concurrence of a majority of the entire membership of the Osage Nation Congress to pass." This language differs from the language in the Constitution in that the Rules add the majority applies to the "entire membership" of the Congress. However, this does nothing to clear up the vagary of a majority vote presented by a vacant Congressional seat, and, if anything, further confuses the matter. Entire means "whole" or "with no part left out", but this can be construed to mean the entire twelve members as fixed by the Constitution or the of the entire eleven remaining members.

Without guidance in Osage Nation law or rule, this becomes a parliamentary question. Congressional Rule 11.2 allows for any parliamentary question to be resolved by using the following, in order:

- a. The Osage Nation Constitution
- b. Statutes of the Osage Nation
- c. Osage Nation Congress Rules
- d. Current Edition of Robert's Rules of Order Newly Revised
- e. Mason's Manual of Legislative Procedure

Next, the Rules dictate to look at Robert's Rules of Order. Robert's Rules states, "The word majority means "more than half"; and when the term majority vote is used without qualification--as in the case of the basic requirement---it means more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions...."⁴ A majority is simple math when the Congress is fully seated at twelve members.

However, you ask what constitutes a majority of the members of Congress when one seat

³ See, *Osage Const.*, Art.VI, Sec.11, ("A member may be expelled from the floor for disorderly or contemptuous behavior by a vote of two-thirds (2/3) of all members of the Osage Nation Congress present."); *Osage Const.*, Art.VI, Sec. 14, ("If, after reconsideration, at least three-fourths (3/4) or nine (9) members of Congress vote to pass the bill, it shall become law."); *Osage Const.*, Art. VI, Sec. 14, ("If on reconsideration, any item is approved by three fourths (3/4) of the members elected to Congress, it is a part of the law notwithstanding the objections."); *Osage Const.*, Art. VI, Sec. 14, ("The Osage Nation Congress may, by concurrence of two-thirds (2/3) of the membership, provide another effective date.").

⁴"Robert's Rules of Order Newly Revised: 10th Edition." *Robert's Rules of Order Newly Revised: 10th Edition*, by General Henry M. Robert, 10th ed., Perseus Pub., 2000, p387.

is vacant, and the voting membership is eleven. As stated above, Congressional Rules at 5.9.9 states, "A bill requires a concurrence of a majority of the entire membership of the Osage Nation Congress to pass." In this case, Robert's Rules decrees, "a majority of the entire membership[] is a majority of the total number of those who are members of the voting body at the time of the vote."⁵ A Congressional vacancy leaves eleven members of the voting body. More than half of eleven is six and constitutes a majority. So, when one seat is vacant and there are only eleven Congressional members, bills may be passed by a concurrence of six members of Congress.

Of particular note, Robert's Rules states, in footnote, that, "In the case of a body having a legally fixed membership – for example, a permanent board – it is also possible to define a voting requirement as a *majority of the fixed membership*, which is greater than the simple majority of the entire membership if there are vacancies on the body."⁶ Congress does have a legally fixed membership by the Constitution. However, I can find no substantive ruling by the Speaker of Congress on this issue. Without such a Congressional Rule or Speaker's ruling, we decline to interpret Osage Constitutional law on footnote authority and a possibility. Nevertheless, this does mean Congress may, by rule, dictate that the majority of the membership means a majority of the Constitutionally fixed membership of twelve. In that case, no matter how many Congressional vacancies there were, a majority of the members would always be seven. Hence, a concurrence of seven members of Congress would always be needed to pass a bill.

B. RESOLUTIONS

Article VI, Section 12 of the Constitution does not speak to Congressional resolutions. Article VI, Section 15 of the Constitution provides for Congressional resolutions. However, the Constitution is silent on the number of concurring members needed to pass a resolution. This is addressed in the Congressional Rules. Rule 5.9.9 says, "A Resolution requires an affirmative majority of those members of the Osage Nation Congress present at a properly convened session as specified by the Osage Nation Constitution and pursuant to Osage Law to pass." The number of members needed to pass as resolution is fixed to the number of members present, and not tied to the entire members of Congress. Therefore, the majority means more than half of the persons legally entitled to vote. If there are eleven Congress persons present for a vote on a resolution, then a concurrence of six members is required for passage.

III. CONCLUSION

It is, therefore, the official opinion of the Attorney General, that:

As it stands, a majority of the members of Congress needed to pass a bill according to Article VI, Section 12 of the Constitution, means more than half of the number of those who are members of the voting body at the time of the vote. A majority needed to pass a resolution means more than half of the Congressional members present for a vote.

⁵ *Id.* at 390.

⁶ *Id.* Emphasis theirs.

Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Clint Patterson", is written over a horizontal line.

Clint Patterson,
1st Asst. Attorney General