

Rule 11, Section 2

Germaneness

84 H.J. Reg. \_\_\_ (González of El Paso 5/28/15)

### **HB 3405-POINT OF ORDER**

Representative Isaac had a local water district bill, HB 3405. It appeared on the items eligible calendar. When the bill was laid out, Representative Mary González raised a point of order on multiple grounds to further consideration of the bill. The parliamentarian was provided written materials and asked for time to research the matter. The matter was temporarily put aside.

On Wednesday, May 27, 2015, the chair laid the matter before the house and on the advice of the parliamentarian, determined that one amendment to HB 3405 was not germane. Specifically, that the provision relating to SOAH contested cases in the senate committee substitute was not germane to the provisions of the house engrossment of HB 3405. Based on this evidence, the chair sustained the point of order. Pursuant to Rule 14, Section 5, the parliamentarian is required to submit the rationale for a ruling in writing to the journal and to the body not later than 24 hours after the ruling.

Yesterday afternoon, the parliamentarian, in preparing the written ruling, discovered an error in legal reasoning in the basis of the written ruling. The house engrossment contained sufficient provisions to allow considerations of an alternate method of resolving cases by SOAH. Rule 14, Section 8. The parliamentarian advised the speaker of the error. In the discussion, the parliamentarian suggested to the speaker that, as with all points of order, an error is corrected by sending the item back to the place where the point of error occurred. In this case, the error was the incorrect ruling by the speaker based on the error in advice given by the parliamentarian. Accordingly, a motion was made to recall the bill from the Senate (as the chair would recall any matter sent to the Senate in error) and to return the item to the body for consideration. Absent the passage of time, the matter will be in the identical position as it was when the parliamentarian incorrectly advised the speaker. The Isaac item eligible will be before the membership, Representative Gonzalez will have her remaining points of order standing in the way of further consideration and the chair, properly advised, will have the choice to correctly rule. The duty of the parliamentarian is to advise the speaker of the House. Rule 2, Section 9. However, his duty is to not only the Speaker, but all members and the institution.

While the aspirational goal of an arbiter should be to be completely error free, that goal is unlikely to be achieved. Every day on the house floor, the parliamentarian makes errors that can have serious consequences. The chair can move too fast, miss a timely (or untimely) request for a record vote, take a matter up out of order, or improperly calculate a vote total. The body is aware

of these mistakes, which is why the second most common phrase in the Texas House after “Mr. Speaker, members” is “Back up, members”.

Under the rules of the house, the parliamentarian has a duty to advise and assist the presiding officer and the members of the house on matter of procedure. Rule 2, Section 9. This house has also required the speaker to instruct the parliamentarian to provide each member a written explanation of any final ruling on a point of order within 24 hours after the final ruling was announced before the house. As Masons Section 584, Paragraph 16 points out, “the parliamentarian should unobtrusively call the attention of the presiding officer to serious errors in procedure.” In addition, as an advisor to the presiding officer and the body, while the parliamentarian job “as its best often consists of recommending a course of action in the face of conflict recommendations...”, that advice must be competent and correct. Tex. Dis. Rules of Prof Conduct 2.01 Comment 4. The Texas House properly should demand and expect that a person is directly accountable for each action and each decision they make.

The parliamentarian has written a letter apologizing for this error to the presiding officer, Representative Isaac, and Representative González. A copy of that correspondence is attached.