



OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

ATTORNEY GENERAL OPINION
2017-19

The Honorable Anthony Sykes
State Senator, District 24
2300 N Lincoln Blvd., Room 618
Oklahoma City, Oklahoma 73105

December 27, 2017

The Honorable Josh Brecheen
State Senator, District 6
2300 N Lincoln Blvd., Room 417C
Oklahoma City, Oklahoma 73105

The Honorable Joseph Silk
State Senator, District 5
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Oklahoma City, Oklahoma 73105

Dear Senators:

This office has received your request for an official Attorney General Opinion in which you ask, in effect, the following questions:

- 1. Does OKLA. CONST. art. VI, § 11 require the Legislature to attempt an override vote after the Governor has vetoed a bill passed by the Legislature?**
- 2. Does the failure to attempt to override a veto by the Governor violate the oath of office sworn by members of the Legislature pursuant to OKLA. CONST. art. XV, § 1?**

I.
BACKGROUND

On November 16, 1907, President Theodore Roosevelt approved Oklahoma's Constitution and welcomed Oklahoma into the Union as its 46th State. As adopted, the Oklahoma Constitution was ten times longer than the U.S. Constitution and over three times as long as any state constitution to that date. It had novel provisions, such as the initiative and referendum process, but took many of its provisions directly from tribal constitutions, other

state constitutions, and the U.S. Constitution. Many provisions are so similar to those in the U.S. Constitution “that they were obviously copied,” including “the governor’s power of veto [under] Article VI, Section 11.” D. Adkison & L. Palmer, *THE OKLAHOMA STATE CONSTITUTION* 13-14, 21-23 (Oxford Univ. Press 2011 ed.) (parentheses omitted) (hereinafter, “ADKISON & PALMER”). It has also been suggested that Article VI, Section 11 was patterned after the veto provisions in the constitutions of New York and Kentucky. R.L. Williams, *THE CONSTITUTION OF OKLAHOMA AND ENABLING ACT 88-89* (Pipes-Reed Book Co., 1912 ed.) (hereinafter, “R.L. WILLIAMS”). *See also* N.Y. CONST. art 4, § 7; KY. CONST. § 88.

Under Article VI, Section 11, all bills passed by the Legislature must be presented to the Governor for approval. OKLA. CONST. art VI, § 11. If vetoed, the bill is returned, with the Governor’s objections, “to the house in which it shall have originated, who *shall* enter the objections at large in the Journal and *proceed to reconsider it.*” *Id.* (emphasis added). The process then continues as follows:

If, after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill or joint resolution, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of the members elected to that house, it shall become a law, notwithstanding the objections of the Governor. In all such cases, the vote in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the Journal of each house respectively.

Id.

Through this provision, “[t]he drafters gave the Governor the power to veto bills passed by the legislature (a practice, at that time, followed by 43 states), but gave the legislature the power to override a veto by a two-thirds majority vote (a practice followed by 31 states).” ADKISON & PALMER 17. As noted above, Article VI, Section 11 is substantially equivalent to a provision of the U.S. Constitution. Specifically, the Oklahoma Constitution provides that a vetoed bill is returned, with the Governor’s objections, to the originating house of the Legislature, which “*shall* enter the objections at large in their Journal, and *proceed to reconsider it.*” OKLA. CONST. art. VI, § 11 (emphasis added). Under the federal counterpart, a bill vetoed by the President is returned, with the President’s objections, “to that House in which it shall have originated, who *shall* enter the Objections at large on their Journal, and *proceed to reconsider it.*” U.S. CONST. art. I, § 7, cl. 2 (emphasis added).

II. DISCUSSION

A. Standards for Constitutional Interpretation.

In interpreting a constitutional provision, its meaning, “as understood by those who framed and adopted the constitution, is to be ascertained and given effect.” *Austin, Nichols & Co.*

v. Okla. Cty. Bd. of Tax-Roll Corr., 1978 OK 65, ¶ 16, 578 P.2d 1200, 1203. “The meaning of the constitution is fixed when it is adopted, and it is not different at any subsequent time when a court has occasion to pass upon it.” *Wimberly v. Deacon*, 1943 OK 432, ¶ 14, 144 P.2d 447, 450. And while “acquiescence cannot justify a particular holding,” a “long and continued interpretation of the constitution” by acquiescence may aid in “removing doubt as to the meaning of such constitutional provisions as intended by the framers[.]” *Latting v. Cordell*, 1946 OK 217, ¶ 17, 172 P.2d 397, 400. See also *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 375 (1995) (Scalia, J., dissenting) (“A governmental practice that has become general throughout the United States, and particularly one that has the validation of long, accepted usage, bears a strong presumption of constitutionality.”).

Furthermore, constitutional interpretation begins and, absent ambiguity, ends with the text of the provision itself. We are “not at liberty to search beyond the instrument for meaning.” *Okla. Elec. Co-op., Inc. v. Okla. Gas & Elec. Co.*, 1999 OK 35, ¶ 7, 982 P.2d 512, 514. Ambiguity exists only when the text is “susceptible to more than one reasonable interpretation.” *YDF, Inc. v. Schlumar, Inc.*, 2006 OK 32, ¶ 6, 136 P.3d 656, 658. We do not use a “single word or phrase in isolation to attempt to determine their meaning.” *McNeill v. City of Tulsa*, 1998 OK 2, ¶ 11, 953 P.2d 329, 332. Words of a constitutional provision must be given their plain, natural, and ordinary meaning unless the context furnishes some ground to qualify the meaning. *A.E. v. State*, 1987 OK 76, ¶ 16, 743 P.2d 1041, 1046; *State ex rel. Ogden v. Hunt*, 1955 OK 125, ¶ 8, 286 P.2d 1088, 1091.

Finally, “[t]he mother and model of our [state] Constitutions is the federal Constitution.” *Carter v. Rathburn*, 1922 OK 105, ¶ 24, 209 P. 944, 950. When the Oklahoma Constitution was adopted, “similar provisions had been in the Constitutions of the United States and other states for many generations, and various phrases are used to express the same idea.” *State v. Thomason*, 1975 OK CR 148, ¶ 12, 538 P.2d 1080, 1085 (quoting *Stout v. State*, 1913 OK 123, ¶ 14, 130 P. 553, 556). Thus, when “a constitutional provision similar or identical to that contained in the constitution of another state [is adopted], it is presumed that such provision was adopted with the construction previously placed upon it.” *Latting*, 1946 OK 217, ¶ 39, 172 P.2d at 408. “For it is presumed the framers of such constitution were conversant with and designed also to adopt any construction placed upon such provisions or exception in such other jurisdiction.” *Id.*

B. While Article VI, Section 11 requires the Legislature to “reconsider” a vetoed bill, the Legislature has discretion to determine whether to vote to override a gubernatorial veto.

You first ask whether the Oklahoma Constitution requires the Legislature to hold a vote to attempt to override a gubernatorial veto. Article VI, Section 11 requires the Legislature to “reconsider” a vetoed bill, using the mandatory language “shall.” See *State ex rel. Ogden v. Hunt*, 1955 OK 125, ¶ 11, 286 P.2d 1088, 1092 (construing the word “shall” used in a Constitutional provision according to its “commonly accepted meaning” that connotes a mandatory directive). Although, in the legislative context, “reconsider” may be understood to mean, “to take up again (as a motion or vote previously acted on)” it ordinarily means simply “to consider again.” WEBSTER’S THIRD NEW INT’L DICTIONARY 1897 (2002). For

several reasons, the proper reading of the constitutional mandate that the Legislature “shall reconsider” the vetoed bill is that it does *not* require either house to hold a vote to override the Governor’s veto. Rather, the manner in which the vetoed bill is taken up again, and what action is ultimately taken, is within the discretion of each house of the Legislature.

First, the text of Article VI, Section 11 suggests that reconsideration of a vetoed bill and a vote to override the veto are two separate actions—the former mandatory, and the latter discretionary. Specifically, once vetoed, a bill is returned to the originating house, “who *shall* enter the objections at large in the Journal and *proceed to reconsider it.*” OKLA. CONST. art. VI, § 11 (emphasis added). Then, once it has been reconsidered, the originating house may choose to hold a vote: “If, *after such reconsideration*, two-thirds of the members elected to that house shall agree to pass the bill or joint resolution, it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered[.]” *Id.* (emphasis added). Accordingly, it would appear that the framers intended the Legislature to take some action on a vetoed bill, but left it to the Legislature to determine the most appropriate course of action.¹

Second, this conclusion fits with how the framers of the Oklahoma Constitution would have understood the veto process at the federal level. Under the U.S. Constitution, “[p]rocedure and tradition govern the treatment of vetoed bills returned by the President.” Mitchell A. Sollenberger, CONG. RESEARCH SERV., RS21750, THE PRESIDENTIAL VETO AND CONGRESSIONAL PROCEDURE 2 (2004).² After receiving the President’s message and entering it into the journal, the originating house of Congress “complies with the constitutional requirement to ‘reconsider’ by laying the measure on the table (essentially stopping further action on it), referring the bill to committee, postponing consideration to a certain day, or immediately voting on reconsideration (vote on override).” *Id.* By way of historical example, at the time of Oklahoma’s statehood President Roosevelt had vetoed 30 bills, none of which Congress attempted to override.³

At the time of statehood, the framers had the benefit of over a century of federal veto power history. Presidential vetoes and corresponding action from Congress would have been known to the framers and, at that time, Congress challenged only a small percentage of vetoes. *See* SUMMARY OF BILLS VETOED, 1789-PRESENT, *supra* note 3. Still, the framers crafted Article VI, Section 11 to read virtually identically to its federal counterpart. Having done so, the provision should not be read to *require* the Legislature to vote to override a

¹ Indeed, each house of the Legislature has adopted rules governing action to be taken on a bill returned to the house following a veto. *See Okla. S. Rule 8-60* (56th Leg.), *Okla. H. Rules*, § 9-11 (56th Leg.).

² Available at <https://www.archives.gov/files/legislative/resources/education/veto/veto-procedure.pdf> (last visited December 15, 2017).

³ Detailed historical information regarding Presidential vetoes and subsequent Congressional action can be found at UNITED STATES SENATE, SUMMARY OF BILLS VETOED, 1789 – PRESENT, available at <https://www.senate.gov/reference/Legislation/Vetoes/vetoCounts.htm> (last visited December 15, 2017).

gubernatorial veto when no such requirement was ever understood to be imposed by the U.S. Constitution.⁴

Third, this conclusion is likewise consistent with the interpretation by New York's highest court of virtually identical language in the New York Constitution. *See* R.L. WILLIAMS 88-89 (asserting that Article VI, Section 11 of the Oklahoma Constitution is modeled after language in the New York Constitution).⁵ There, the court described the Legislature's constitutional duty to "reconsider" a vetoed bill as follows:

It is apparent that by the use of the verb "reconsider" in this constitutional provision it was not intended to refer to the familiar parliamentary procedure (here embodied in Senate rule V, s 8) by which a deliberative assembly again takes up action it has previously effected, to confirm, to amend or to nullify that action; *in short, to "reconsider" in the constitutional sense is not the same as reconsider in parliamentary usage.* In the case of an executive veto, the previous action of the legislative houses in passing the particular bill has already been effectively nullified by the action of the Governor; it is only in consequence of the constitutional provision that the bill comes before the Legislature again. What is assured by the constitutional mandate of "reconsideration" is that *the Legislature shall address the bill a second time, with the possibility, after review of the bill and the Governor's objections, of new legislative action* by which the two houses may by a two-thirds vote in each override the veto of the Governor. The Constitution provides that in such event the bill shall "become a law (notwithstanding the objections) of the governor". In both political and legislative reality the issue as to whether to override is discrete and quite different from the earlier question as to whether to enact the legislation in the first place.

Bd. of Ed. of City School Dist. of City of New York v. City of New York, 41 N.Y.2d 535, 539-40 (1977). Thus, both longstanding practice of the U.S. Congress and the judicial interpretation of New York's counterpart to Article VI, Section 11 support the conclusion that the Legislature is not required to hold a vote to override a gubernatorial veto. Instead, after taking into account the Governor's objections, the Legislature's constitutional mandate to "reconsider" the vetoed bill may include, for instance, choosing to table the bill for the current session, referring it to committee, postponing further consideration to a

⁴ This conclusion also finds support in various non-precedential statements from Justices of the Oklahoma Supreme Court. For instance, in *Jones v. Winters*, Justice Berry wrote that "[i]t is provided in Art. VI, Sec. 11...that a vetoed bill *may* be reconsidered by the Legislature and that the veto may be overridden if a sufficient number of votes is mustered." 1961 OK 224, ¶ 8, 365 P.2d 357, 366 (Berry, J., concurring) (emphasis added). Similarly, in *Carter v. Rathburn*, Justice Elting viewed Article VI, Section 11 as "plainly contemplat[ing] further legislative action, *if the Legislature sees fit.*" 1922 OK 105, ¶ 87, 209 P. 944, 951 (1922) (Elting, J., dissenting) (emphasis added) (quoting *May v. Topping*, 64 S.E. 848, 850 (W. Va. 1909)).

⁵ *See also Cleere v. United Parcel Serv., Inc.*, 1983 OK CIV APP 29, ¶ 6, 669 P.2d 785, 788 (where Oklahoma has adopted a law from another jurisdiction, later interpretation of the law by courts in that jurisdiction is persuasive in interpreting Oklahoma's version of the law).

certain day, or voting immediately to override the veto. This determination is within the Legislature's discretion.

Next, in your request you specifically ask whether the conclusion reached herein is in conflict with the following sentence of Article VI, Section 11:

In *all* such cases, the vote in both houses *shall* be determined by yeas and nays, and the names of the members voting *shall* be entered on the Journal of each house respectively.”

(emphasis in request). For two reasons, there is no conflict. First, the corresponding provision in the U.S. Constitution contains a virtually identical sentence, *see* U.S. CONST. art. I, § 7, cl. 2, and as explained above, that has never been understood to require an override vote. Second, the rule of the last antecedent presumes that drafters have placed modifying words near the language they intend to modify. *See Bd. of Trustees of Firemen's Relief & Pension Fund of City of Muskogee v. Templeton*, 1939 OK 53, ¶ 21, 86 P.2d 1000, 1004; *see also* A. Scalia & B. Garner, *READING LAW: THE INTERPRETATION OF LEGAL TEXTS* 144-46 (2012). In Article VI, Section 11, the above sentence immediately follows a sentence that reads:

If, after such reconsideration, two-thirds of the members elected to [the originating] house shall agree to pass the bill..., it shall be sent, together with the objections, to the other house, by which it shall likewise be reconsidered; and, if approved by two-thirds of the members elected to that house, it shall become law, notwithstanding the objections of the Governor.

OKLA. CONST. art. VI, § 11. Applying the rule of the last antecedent, the sentence to which you refer applies only to situations in which the Legislature elects to hold a vote to override the veto. All such votes must “be determined by yeas and nays” and “the names of the members voting shall be entered” in each house's journal. However, where the house reconsiders the bill but elects *not* to hold an override vote, those requirements do not apply.

C. Nothing in the oath of office sworn by members of the Legislature requires that the Legislature vote to override a gubernatorial veto.

Finally, you ask whether members of the Legislature violate their oath of office if they do not attempt to override a veto. The Oklahoma Constitution requires all public officers to “take and subscribe to” the following oath of office:

I...do solemnly swear (or affirm) that I will support, obey, and defend the Constitution of the United States, and the Constitution of the State of Oklahoma, and that I will not, knowingly, receive, directly or indirectly, any money or other valuable thing, for the performance or nonperformance of any act or duty pertaining to my office, other than the compensation allowed

by law; I further swear (or affirm) that I will faithfully discharge my duties...to the best of my ability.

OKLA. CONST. art. XV, § 1. The only aspect of the oath that is applicable to your question is the duty to “support, obey, and defend” the Oklahoma Constitution and discharge that duty “faithfully” and “to the best of [the Legislator’s] ability.” As set forth above, the constitutional requirement that the Legislature “reconsider” a bill vetoed by the Governor does *not* require either house of the Legislature to vote to override the veto. Accordingly, choosing not to hold such a vote does not violate the oath of office.

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

- 1. OKLA. CONST. art. VI, § 11 does not require either house of the Legislature to hold a vote to override a veto by the Governor.**
- 2. Likewise, nothing in the oath of office sworn to pursuant to OKLA. CONST. art. XV, § 1 would require either house of the Legislature to hold a vote to override a veto by the Governor.**



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