

context of a parliamentary ruling. Since each House of the Legislature determines its rules of procedure (Article IV, Part Third, Section 4, Constitution of Maine), the question would be most appropriately decided by the presiding officer of the body in which it is raised, subject to appeal to the membership. However, in order to be of assistance to you and to presiding officers should this question be raised in the future, we provide the following information.

Our research has not disclosed a wealth of precedent on this question. Furthermore, what precedent there is seems divided. One line of authority stems from an 1844 parliamentary ruling in the United States House of Representatives. 5 Hind's Precedents of the House of Representatives, page 322, § 5644 (copy attached for your information). Speaker John W. Jones ruled that a motion to reconsider a vote sustaining a presidential veto was out of order. The ruling, which was upheld on appeal, was based on the theory that the House was voting on the vetoed legislation only because the Constitution so provided and once a vote was taken, the House had exhausted its power and could not again reconsider its vote. This precedent has<sup>1/</sup> been cited favorably in several recognized parliamentary treatises.

A second line of authority stems from judicial decisions in two states on this question. A South Carolina court has taken the position that the constitutional veto reconsideration provision must be read together with the provision that each house shall make its own rules of procedure. The Court concluded that if a motion to reconsider is the established parliamentary rule of the body, such motion is in order after a vote on a veto. State ex rel Coleman v. Lewis, 186 S.E. 625 (S.C., 1936). The Massachusetts court has considered the matter twice. Nevins v. City Council of City of Springfield, 116 N.E. 881 (Ma., 1917); Kay Jewelry Co. v. Bd. of Registration in Optometry, 26 N.E.2d 1 (Ma., 1940). In both cases the Court noted the 1844 House of Representatives precedent, but in Nevins the Court also noted an opposite ruling in the United States Senate in 1856. In Kay Jewelry Co. the Court voiced

---

<sup>1/</sup> Brown, Jefferson's Manual and Rules of the House of Representatives (95th Congress) p. 50, § 109 (1977)

Cannon's Procedure in the House of Representatives, p. 468 (1963)

Cushing, Law and Practice of Legislative Assemblies, p. 924, § 2386 (1874)

Hughes' American Parliamentary Guide, p. 287, § 643 (1926)

Wilson, A Digest of Parliamentary Law, p. 292, § 2151 (1869)

Mr. Jones having appealed, on February 2 the decision of the Chair was sustained.<sup>1</sup>

5644. The motion to reconsider may not be applied to the vote on reconsideration of a bill returned with the objections of the President.—On June 12, 1844,<sup>2</sup> a motion was made by Mr. Orville Hungerford, of New York, to reconsider the vote by which the House on the previous day refused, on reconsideration, to pass the bill (No. 203) entitled "An act making appropriations for the improvement of certain harbors and rivers," which had been returned with the objections of the President.

The Speaker<sup>3</sup> decided that inasmuch as the vote now proposed to be reconsidered was taken in a manner expressly provided for by the Constitution of the United States, and having been thus taken, the decision must be considered final, and no motion to reconsider was in order.

From this decision Mr. John Quincy Adams, of Massachusetts, appealed.<sup>4</sup> After debate the Chair was sustained by a vote of 97 to 85.

5645. The motion to reconsider may not be applied to the vote on a motion to suspend the rules.—On January 13, 1851,<sup>5</sup> Mr. Williamson R. W. Cobb, of Alabama, having called up the motion submitted by him on Tuesday previous to reconsider the vote by which the House, on the previous day, had refused to suspend the rules, so as to enable the gentleman from Indiana [Mr. George W. Julian] to present the memorial of the meeting of Anti-slavery Friends, held at Newport, Ind., on the subject of slavery and the repeal of the "Fugitive-slave law."

The Speaker<sup>6</sup> stated that, when he permitted this motion to be entered upon the Journal, he expressed doubts as to the propriety of entertaining it. Subsequent examination of the subject had confirmed him in the opinion that a motion to reconsider a vote upon a motion to suspend the rules was not in order. He therefore ruled the motion out of order.

<sup>1</sup>For statement of the practice in regard to the motion to reconsider, see Globe, p. 510, February 4, 1853. (Second session Thirty-second Congress.)

<sup>2</sup>First session Twenty-eighth Congress, Journal, pp. 1093, 1097; Globe, pp. 665-675.

<sup>3</sup>John W. Jones, of Virginia, Speaker.

<sup>4</sup>On June 13 Mr. Adams gave his reasons for the appeal. He said the Constitution provided that the bill should be reconsidered with the President's objections. Reconsideration implied deliberation. But the vote had been taken under the operation of the previous question, which allowed no deliberation. Therefore the provision of the Constitution had been violated.

The Speaker, replying, asked how it was that a motion to reconsider was ever entertained? It was only in virtue of the rules of the House. The bill was passed some days ago, and it was no sooner passed than a motion was made to reconsider it. That motion was rejected; all power under the rule was exhausted. Had it ever been heard of that a motion to reconsider, being once rejected, could be renewed? There was, however, a power higher than the rules which provided that whenever a bill was returned by the President of the United States with objections it was the duty of the House to proceed to reconsider it. Without that provision of the Constitution the House could never again have touched the bill; and the requirement of the Constitution having been complied with, there was no power in the House to touch the subject again.

Messrs. Thomas H. Bayly and George C. Dromgoole, of Virginia, replied to the point made by Mr. Adams, Mr. Dromgoole contending that Mr. Adams had confounded discussion with consideration.

<sup>5</sup>Second session Thirty-first Congress, Journal, p. 134; Globe, pp. 182, 225.

<sup>6</sup>Howell Cobb, of Georgia, Speaker.