

Gov. Fallin: Special session likely needed after cigarette 'fee' ruled unconstitutional by Oklahoma Supreme Court

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The Oklahoma Supreme Court has ruled a \$1.50-a-pack fee on cigarettes passed this session to be unconstitutional, prompting Gov. Mary Fallin to say she believes a special session of the Legislature would be necessary.

The measure was expected to generate \$257 million in revenue and had been scheduled to take effect Aug. 24.

The state's high court heard oral arguments this week on three

challenges to late revenue bills passed by the Legislature last session.

Tobacco companies filed suit after lawmakers, facing an \$878 million budget hole, passed Senate Bill 845, which put a smoking cessation fee on cigarettes. That came after unsuccessful efforts to pass it as a tax.

An opinion filed by the court Thursday states that the timing of the measure made it unconstitutional.

"None of this is to say that the Legislature cannot choose this particular sort of regulatory tool — a 'sin tax' — to further its goal of reducing smoking," the opinion reads.

"But if the Legislature wishes to deploy this tool, rather than the plethora of other regulatory tools available to it for advancing its goal, it must comply with Article V, Section 33 because the people have insisted that legislative measures 'intended to raise revenue' — i.e., those whose primary effect is to reach into the people's pockets to take more money to fund state government — be significantly more difficult to enact than other types of legislation."

Tax increases must garner three-fourths support in both chambers of the Legislature or go to a vote of the people based on State Question 640, passed in 1992. Revenue-raising measures must originate in the House and can't be passed in the last five days of session.

Senate Bill 845 did not secure three-fourths approval, did not originate in the House and passed in the last five days of the session.

"By May 26th, with the end of the legislative session looming, the Legislature had not yet fulfilled its constitutionally-mandated duty to enact a balanced budget," the court's opinion states, adding that a House-passed budget depended on revenue from SB845. "This meant that the House was confronted with a constitutional conundrum: either pass SB 845, which was essential to balancing the budget but would perhaps require violating (the law), or don't, and violate (the law) by failing to balance the budget.

"As one legislator put it, this was 'a decision between bad or worse.'"

Fallin expressed her disappointment in a statement after the ruling.

"I will be discussing with legislative leaders from both parties the need to address the \$215 million shortfall this will create for the Department of Human Services, the Department of Mental Health and Substance Abuse Services and the Oklahoma Health Care Authority, the three agencies that received the bulk of the money that was to be generated by the cessation fee," Fallin said.

"These agencies and the people they serve cannot sustain the kind of cuts that will occur if we do not find a solution. My belief is we will have to come into special session to address this issue."

Senate Pro Tem Mike Schulz said he disagrees with the ruling but appreciated the quick decision.

"There are several options available to us, and Senate leadership will continue to work with the governor's office and House on deciding the best move forward," Schulz said in a statement.

House Minority Leader Scott Inman said Democrats had "sounded every alarm bell" about the legislation in a response to the ruling.

"Today, I'm urging Gov. Fallin to call for a special session and for Republican leaders to come together with myself and Sen. Sparks and draft a truly bipartisan and constitutional budget plan," Inman said in a statement.

http://www.tulsaworld.com/news/government/cigarette-fee-ruled-unconstitutional-by-oklahoma-supreme-court/article_948028d8-a7b0-5835-99ef-7b5c1ff4eaa2.html