



STATE OF KANSAS

Office of the Attorney General

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CURT T. SCHNEIDER
Attorney General

July 25, 1975

ATTORNEY GENERAL OPINION NO. 75- 306

Roy E. Perkins, President
Unified School District No. 282
Route 2
Howard, Kansas 67349

Re: Schools--Organization Powers & Finances of Boards
of Education--Election of Officers

Synopsis: It is the opinion of this office that an election of school board officers in which the president-elect receives a plurality of the votes of the full membership and a simple majority of those present constitutes a legally valid and binding election. Such a matter is not the type of business which is subject to the requirement of approval by a majority vote of the entire membership.

* * *

Dear Mr. Perkins:

You have requested an opinion from this office questioning whether the election of school board officers is considered as the conduct of such business as is subject to the provision of K.S.A. 72-8205 which requires that the passage of a motion or resolution be by a majority vote of the full membership.

The statute, K.S.A. 72-8205, provides in part:

A majority of the full membership of the board shall constitute a quorum for the purpose of conducting any business of the school district, and the vote of majority of the full membership of the board shall be required for the passage of any motion or resolution.

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The statute clearly envisions two types of business. First, it provides that every item of school board business must be conducted before a quorum, defined as a simple majority of the full membership. Secondly, certain specified types of business require approval by a majority vote of the entire elected membership. Construed in conjunction with K.S.A. 72-7901a which requires that the school board of all unified school districts be composed of seven members, this latter provision, emphasized above, unquestionably requires four affirmative votes for passage of any motion or resolution irrespective of the number of school board members actually present.

What the legislature desire to be comprehended by the words "motion or resolution" is not altogether clear. No suggestion as to its intended meaning is contained in the statute itself. For purposes here, there is no substantial difference between a motion and a resolution. See, Balacek v. Board of Trustees of Fire Department Pension & Related Funds, 26 NYS 2d 419, 424 (1941). Under the traditional rules of parliamentary procedure embodied in Robert Rules of Order, the actual nomination of a particular individual and the subsequent election to determine the winner are not technically considered as business requiring a formal motion to transact. Robert, General Henry M., Robert's Rules of Order--Newly Revised, Scott, Foresman and Company (Glenville, Illinois, 1970 ed.) pp. 241. In Kansas, unified school districts are statutorily required by K.S.A. 72-8203 to hold elections at the first meeting in every July.

Generally, the election of officers in an organization is transacted by the ballot procedure under rules previously prescribed by statute or in the group's by-laws or equivalent. Its operation is completely internal in the sense that its purpose is to provide a chain of command or structure designed to facilitate and expedite that business associated with the board's functions. It is quite similar in nature to such other organizational acts as the establishment of meeting times and the like. It differs from business by motion or resolution to the extent that these types concern the school district's legal, economical and social relationships with representatives of the public and private sectors of the community. As such, an election of officers could not properly be characterized as the same type of business to which the requirement of the approval by a majority of the entire board membership is directed.

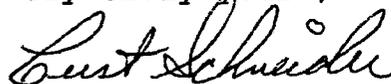
Further support for this conclusion may be gleaned from the statutory language itself. First, the wording of K.S.A. 72-8205

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unmistakably shows that the legislature intended that at least some board business would not require a full majority vote. If the contrary had been their true intention, a simple insertion of the words "all business" and a deletion of "any motion or resolution" in that portion emphasized above would have readily accomplished this same result. The failure to do this was apparently done in order to insure that some school board business could be accomplished without being unduly handicapped by the explained or unexplained absence of board members. Considering the apparent gap in the wording of the statute in conjunction with the aforestated reasons limiting application of the "majority vote of the full membership" rule, it is our view that the election of officers is not school board business which requires approval of a majority of the full membership of the board.

Accordingly, in answer to your specific question, it is the opinion of this office that an election of school board officers in which the president-elect receives a plurality of the votes of the full membership and a simple majority of those present constitutes a legally valid and binding election. Such a matter is not the type of business which is subject to the requirement of approval by a majority vote of the entire membership. Mr. Perkins and Mr. Criger are entitled to hold the respective offices to which they were elected.

Very truly yours,



CURT T. SCHNEIDER
Attorney General

CTS:HTW:bv