



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 6, 1978

ATTORNEY GENERAL OPINION NO. 78- 7

Mr. James B. McKay, Jr.
McKay, McKay & Hargrove
Petroleum Building
214 West Central Avenue
El Dorado, Kansas 67042

Re: Junior Colleges--Board of Trustees--Votes

Synopsis: A member of a community junior college board of trustees who abstains from voting upon a particular question shall be deemed to acquiesce in the will of the majority of members voting upon that question.

* * *

Dear Mr. McKay:

As counsel for the board of trustees of the Butler County Community Junior College, you request my opinion concerning the effect of an abstention in votes taken by the Board.

As you indicate, K.S.A. 72-8205, applicable to boards of education of unified school districts, requires the vote of a majority of the full membership of the board for passage of any motion or resolution. There is no such specific statutory directive applicable to community junior college boards of trustees.

In *Equity Investors, Inc. v. Armest Group, Inc.*, 1 Kan.App.2d 276, ___ P.2d ___ (1977), the court stated that "[a]t common law an abstainer was counted as voting with the majority, or at least as acquiescing in their action," and that this rule obtained in Kansas, citing *Smith v. State*, 64 Kan. 730, 68 Pac. 641 (1902), in which the court stated thus:

Mr. James B. McKay, Jr.
Page Two
January 6, 1978

"A quorum of members being present at the regular meeting of the council at which the resolution was passed authorizing the entry of judgment, a majority of the quorum could lawfully adopt it." 64 Kan. at 732.

The statement of facts in that case does not indicate that an abstention was in any way involved. Nonetheless, the court there did cite with approval authority from other jurisdictions approving the general rule that one who abstains is deemed to acquiesce in the will of the majority of those voting upon a question, and the Court of Appeals has indicated its adherence to that same general rule where no statute has modified its application. There being no such statute in this instance, it is my opinion that when a member of the board of trustees abstains from voting upon a given question, that the abstaining member should be deemed to have acquiesced thereby in the will of the majority of those voting upon the question. In the annotation at 63 A.L.R.3d 1072, the writer cites a number of cases in which this rule is not applied where the member who abstains has previously expressed his or her opposition to or disapproval of the proposed action. This particular question appears not to have been litigated in any appellate court in Kansas, and thus, we express no opinion on this particular aspect of the question.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj