



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 91- 73

David C. VanParys
Leavenworth County Counselor
Courthouse
4th & Walnut
Leavenworth, Kansas 66048

Re: State Departments; Public Officers and Employees --
Public Officers and Employees; Open Public Meetings
-- Meeting Defined; Quorum; Impact of Abstention on
Quorum; Disqualified Member

Synopsis: It is our opinion that unless a specific law alters
common law, the presence of five of a nine member
board constitutes a quorum of that body and a
majority vote of those five members (three) is
sufficient to bind the body. If one of the members
abstains from the vote, he is deemed to have voted
with the majority unless he has an interest or bias
in the matter and is therefore disqualified. Where
the required majority exists without the vote or
presence of the disqualified member, his vote or
presence will not invalidate the result. Members
disqualified from voting may not be counted when
determining whether a quorum is present. Cited
herein: K.S.A. 75-4317a.

* * *

Dear Mr. VanParys:

As Leavenworth county counselor you request our advice on
whether a voluntary abstention or disqualification of a board

member results in a requirement that the board member no longer be considered as present for purposes of determining a quorum. You further ask whether affirmative votes by three board members of the five in attendance is sufficient to bind a nine member board when one of the five present does not vote or is disqualified from voting.

K.S.A. 75-4317a defines a meeting subject to the provisions of the Kansas open meetings act (KOMA) as a "gathering or assembly by a majority of a quorum of the membership of a body or agency subject to this act for the purpose of discussing the business or affairs of the body or agency." Thus, for the purposes of the KOMA, a meeting occurs if a majority of a quorum engages in a prearranged gathering for the purpose of discussing the affairs of the body, despite the lack of a vote. Unless statutorily altered, a quorum is a simple majority of the body, and thus, a quorum of a nine member board is five. If a majority of that quorum is present (3) the KOMA may be applicable pursuant to K.S.A. 75-4317a. It is the number present that makes the meeting lawful and gives the body the power to pass the law or do any other valid act. When such a body is legally assembled, a majority thereof may do valid acts for the body. McQuillin, Quorum and Number of Votes Required to Act, § 13.27 (1985). If a quorum is present and a majority of that quorum votes to pass or defeat an action, such votes are sufficient. See Annot., 63 A.L.R. 3d 1072, 1081 (1975).

An abstention may have different results, depending upon the reason for abstention. To abstain means to voluntarily refrain or to withhold oneself deliberately from an action. Ertl v. Board of County Commissioners, 211 Kan. 202 (1973). Generally, if a member abstains or fails to cast a vote, common law recognizes that their silence is acquiescence to the measure rather than opposition. City of Haven v. Gregg, 244 Kan. 117, 120 (1988); 56 Am.Jur.2d Municipal Corporations, § 168; Annot. 43 A.L.R. 2d 698 (1955). If the members present desire to defeat a measure, they must generally cast a vote or voice their opposition.

This common law rule is altered if a board member is disqualified because of interest or bias in regard to the subject matter being considered. In such a situation, that board member's vote may not be counted or implied in determining the necessary majority for a valid action. Anderson v. City of Parsons, 209 Kan. 337, 342 (1972). It is also the rule that where the required majority exists without the vote of the disqualified member, his presence and

vote will not invalidate the result. Id. at 342. Participation in comprising a quorum does not appear permissible if the individual is disqualified from voting. "A disqualification is deemed the same as a vacancy when determining the number of members of the council." McQuillin, § 13,27b. Thus, the number required to constitute a quorum or bind the body may be altered if there is a disqualification. The common law rules concerning abstentions and majority may also be altered by specific statutory requirements concerning the number of votes required to pass a certain matter. See City of Haven v. Gregg, 244 Kan. 117 (1988).

Thus, it is our opinion that, unless a specific law alters common law, the presence of five of a nine member board constitutes a quorum of that body and a majority vote of those five members (three) is sufficient to bind the body. If one of the members abstains from the vote, he is deemed to have voted with the majority unless he has an interest or bias in the matter. Where the required majority exists without the vote of the disqualified member, his vote or presence will not invalidate the result. Members disqualified from voting may not be counted when determining whether a quorum is present or in determining a majority vote. However, if common law applies, a disqualified member may reduce the number of the body and may therefore impact upon the number required to comprise a quorum or bind the body.

Very truly yours,


ROBERT T. STEPHAN
ATTORNEY GENERAL OF KANSAS


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