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November 14, 1974

FILE NO. S-837

SCHOOLS AND SCHOOL DISTRICTS
State Board of Education:
Majority Vote Necessary to
Take Action

Honorable Michael J. Bakalis
Superintendent of Public Instruction
188 W. Randolph Street
Chicago, Illinois 60601

Dear Dr. Bakalis:

I have your letter wherein you state:

"* * * The State Board of Education, established pursuant to Article 1-A of Ill. Rev. Stat. Ch. 122, is currently comprised of 13 members. According to Article 1-A, as long as at least nine members are present, there is a quorum and the Board may take action by majority vote.

My question is:

If a quorum is present, will a majority vote of the Board as it

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> is constituted with 13 members be sufficient to take final action on an issue?

* * *

Section 1A-4(E) of the School Code (Ill. Rev. Stat. 1973, ch. 122, par. 1A-4(E)) provides:

> "Nine members of the Board shall constitute a quorum. A majority vote of the Board is required to approve any action."

Under the phrase "majority vote of the Board", there are three possible bases upon which a majority may rest:

> (1) A majority vote of 17 members (the number of appointive positions on the board by statute.)
>
> (2) A majority vote of 13 members (the number actually serving on the board at this date), or
>
> (3) A majority vote of those present at any meeting so long as there is a quorum.

An answer to your question requires an interpretation of the words "majority vote of the Board". Of course, the object and purpose throughout will be to ascertain the intent of the legislature. <u>Berry</u> v. <u>G. D. Searle</u>, 56 Ill. 2d 548.

The first issue to consider is whether it was the intention of the legislature to base a majority on the number

of members on the Board (1 and 2 above), or the number of members present at a meeting (3 above).

It has generally been held that where a statute is silent as to what constitutes a majority vote, the common law rule applies. That rule provides that a majority of a quorum constituted of a simple majority of a collective body is empowered to act for the body. ("majority of the quorum rule".) Federal Trade Commission v. Flotill Products, 389 U.S. 179, 183, and cases cited in n. 6; Launtz v. The People ex rel. Sullivan, 113 Ill. 137, 142; 2 Am. Jur. 2d, Administrative Law, §196; 59 Am. Jur. 2d, Parliamentary Law, §6, p. 322; 73 C.J.S. Public Administrative Bodies and Procedure, §21, p. 314; 43 A.L.R. 2d 698, 716.

However, the majority of the quorum rule is not necessarily applicable here, since the statute is not silent; nor is it clear that the legislature was merely restating the "majority of the quorum rule" within the statute.

In Simmons v. Holm, (Ore.) 386 P. 2d 368 (1961), the Supreme Court of Oregon was faced with a similar dilemma. The question presented in Simmons was whether an ordinance had been

adopted by the city council of Grant's Pass. The city charter provided that an ordinance may be placed upon final passage on the day of its introduction (without three readings) in the case of an emergency, and "upon the vote of three-fourths of the council". In holding that "three-fourths of the council" meant three-fourths of the membership, the Court stated at page 373:

> "While the cases are not uniform, there is substantial authority for the proposition that a specified percentage 'of the council' means that percentage of the full membership. State ex rel. Rea v. Etheridge, 122 Tex. 18, 36 S.W.2d 983; Tex. Com. App., 32 S.W. 2d 828; Griffin v. Messenger, 114 Iowa 99, 86 N.W. 219; Horner v. Rowley et al., 51 Iowa 620, 2 N.W. 436; Streep v. Sample, Fla. 1956, 84 So.2d 586; State v. Central States Electric Co., 238 Iowa 801, 28 N.W.2d 457."

Likewise in State ex rel. Doyle v. Torrence, (Tenn.) 310 S.W. 2d 425, (1958), the question squarely presented was whether approval by a "two-thirds vote of the local legislative body", as used in an amendment to the Tennessee Constitution, meant two-thirds vote of a quorum or two-thirds vote of the entire membership of

the local legislative body. Stating that it would disregard the interpretation placed upon these words by some members of the Constitutional Convention, but would rather look to the ordinary meaning of the language, and what the people who voted for the constitutional amendment believed the language signified, the Court held that a two-thirds vote of the membership of the legislative body was required and it rejected the "majority of the quorum rule".

I must conclude that the Illinois legislature did not intend that a majority of the quorum rule should apply, nor did it intend to restate such rule in the statute; but rather that a majority vote should be based on the membership of the Board.

A further question is therefore raised. At present, the State Board of Education is composed of 13 members with four vacancies. The issue, therefore, becomes whether "a majority vote of the Board" means a majority of 17, or a majority of the 13 members actually sitting on the Board and capable of exercising authority.

In McLean v. The City of E. St. Louis, 222 Ill. 510,

the city council of the city of East St. Louis consisted of 14 aldermen. By statute, the concurrence of a majority of all the members elected to the city council was necessary for passage of a city ordinance. One of the aldermen had resigned. Five months after the resignation, the vacancy having not been filled, a special assessment ordinance was placed upon passage. Twelve aldermen were present of which seven voted aye and five voted nay. The ordinance was declared passed and approved by the mayor.

In holding the ordinance had not passed, the Supreme Court stated that, first, a majority of the whole body and not a majority of a quorum was required under the statute. The Court further held that a vacancy on the council did not decrease the number of votes required for a majority.

The Court stated at page 515:

> "The intention of the legislature so expressed is that the legislative body shall always consist of the full number of aldermen. Fourteen aldermen were elected, and conceding that the acceptance by Goedde of the office of city treasurer created a vacancy, the law required that an election should be held to fill such vacancy. Over five months had elapsed and the law had not been

> complied with. We are asked to say that under those circumstances seven aldermen could legally pass the ordinance in question. Such a construction would enable less than a majority of the city council who are in favor of the passage of an ordinance to make it a law of the municipality in case of the death, removal, resignation or disqualification of one or more members, and to possess themselves of a power which they would not otherwise have, by failing to perform the duty imposed upon them. The number might be depleted in that way to such an extent that a minority of the council might be enabled to pass ordinances, and no construction ought to be adopted which might lead to such results. It seems to us clear that such was not the intention of the legislature."

It would appear that the holding in this case is consonant with the majority rule in other jurisdictions. See, 43 A.L.R. 2d 698, 706.

However, the holding in McLean was distinguished in Whitehead v. Village of Lombard, 3 Ill. 2d 464. Whitehead involved a village board which, as elected, consisted of six trustees and a village president. At the time of the vote of an ordinance annexing a tract of land to the city of Lombard, one of the trustees had resigned. The apposite statute provided that a "two-thirds vote of the corporate authorities is required to annex". The vote on the ordinance

was four in favor and two against. Taxpayers, relying primarily on McLean, challenged the validity of the ordinance. In holding the ordinance had properly passed, the Court distinguished McLean by noting that the applicable statute in that case provided that "a majority (vote) of the members elected" was necessary for passage, whereas, in the case of annexation, "a majority vote of the corporate authorities" was required. The Court then pointed out that even though one of the trustees had resigned, the five remaining trustees and the village president constituted the corporate authorities of the village of Lombard and a majority vote of the remaining members was all that was required for passage.

It would appear that the language "majority of the Board" in the School Code is similar to the statutory language employed in Whitehead, and dissimilar from the language of McLean.

Webster's Third New International Dictionary, Unabridged, defines the term "board" as "a number of persons appointed or elected to sit in council for the management or investigation of a public or private business trust or

other organization or institution". It has been stated that a board is a body of men constituting a quorum, (Broadwell v. The People, 76 Ill. 554, 557), also, that a majority is all that is required to constitute a board. Fairview Flour-Spar & Lead Co. v. American Sec. & Trust Co., 206 Ill. App. 443. See, also, People ex rel. Hoffman v. Hecht, (Cal.) 38 P. 941; Gaskins v. Jones, (S.C.) 18 S.E. 2d 454.

Section 1.09 of "AN ACT to revise the law in relation to the construction of statutes" provides:

> "Words purporting to give a joint authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or persons."

Thus, the term "board" is not limited solely to the corporate sense of the word but also has meaning with relation to the individual members who compose the "board".

In Commissioners v. Wachovia Loan & Trust Co., 143 N.C. 110, 55 S.E. 442, a city charter authorized the city commissioners (composed of seven members elected) to borrow "only after they have passed an ordinance by a three-fourths vote of the entire board at two separate regular meetings".

One commissioner had resigned, and at the time of the second meeting, only five were present, all voting for passage. It was claimed that the three-fourths requirement was not met as the entire board consisted of seven, not six, members. In answer to this contention, the Court stated at 55 Id. 443:

> "Such a provision is not uncommon in charters of municipal corporations, and the fact that the word 'elected' was omitted after the word 'board' is indicative to us that the Legislature intended that three-fourths of the entire membership of the board in existence at the passage of the ordinance should have power to pass such an ordinance. Wherever the special provision in such charters contains the words 'entire board elected,' or similar terms, it is invariably held that all the members elected must be taken into account. Dillon on Mun. Corp. § 281. We are unable to find any judicial decision which places the same construction upon the words 'entire board', when the word 'elected' does not follow. The term 'board', when used in municipal charters, seems to have two meanings—one abstract, having reference to the legislative creation, the corporate entity, which is continuous, and the other referring to its members, the individuals composing the board. The words 'entire board', as used in the Salem charter, refer to the membership of the board, and were evidently inserted to guard against hasty municipal legislation by requiring three-fourths of all the members to concur."

The Court proceeded to cite and discuss several cases in support of its position. See, also, Beckler v. The State, (Tenn.) 280 S.W. 2d 913.

The conclusion that a "majority vote of the Board", as that phrase applies to the State Board of Education, denotes a majority vote of the Board as it is constituted at the time of the vote is fortified by an examination of the entire statute. It is quite clear that the legislature was cognizant of the possibility of vacancies and its affect on the operation of the Board. For example, the legislature specified in section 1A-1 that no more than nine (rather than a majority) of the members may be from any single political party so as to avoid the possibility of a vacancy causing a violation of the provision. Also, to allay the kind of fear expressed in McLean that it might be possible for less than a majority of the Board (as it is regularly constituted) to act in case of a vacancy, the legislature specifically stated that nine (rather than a majority) should constitute a quorum. However, the legislature did not further state that nine affirmative votes (which would constitute a majority of the full 17 member Board) shall be required to act but rather used the language

"majority vote of the Board". The legislature has in other public acts specified by number both the quorum and majority vote required. See, for example, The Pollution Control Board, section 5a of The Environmental Protection Act (Ill. Rev. Stat. 1973, ch. 111 1/2, par. 1005): "Three members of the board shall constitute a quorum, and three votes shall be required for any final determination by the board"; The Illinois Aeronautics Board, section 3b of the Illinois Air Carriers Act (Ill. Rev. Stat. 1973, ch. 15 1/2, par. 503): "Any three members of the board shall constitute a quorum to transact business and every finding, order or decision approved by any three members of the board shall be deemed to be the finding, order or decision of the board"; State Athletic Board, section 7 of The Athletic Exhibition Registration Act (Ill. Rev. Stat. 1973, ch. 10 4/5, par. 107): "Three members of the board constitute a quorum * * * and the concurrence of at least three members of the board is necessary to render a determination or decision by the board". The inference arises that the legislature intentionally left out a specification that a majority vote shall always require nine votes because it did

not intend such a result.

This conclusion also results in an interpretation which permits a practical application of the statute and results in ease of administration. Thus, the Board with vacancies would be permitted to carry on its business without having to meet an unduly burdensome majority requirement. At the same time, unfairness to the minority would not result as the majority exercises no control over the filling of vacancies. (Under section 1A-1, vacancies are appointed by the Governor by and with the advice and consent of the Senate.)

It is, therefore, my opinion that where a quorum is present, the majority vote required to approve any action of the State Board of Education is a majority of the members actually occupying a position on the Board and capable of exercising authority.

Very truly yours,

A T T O R N E Y   G E N E R A L