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MIG 23 2013

ATTORNEY GENERAL OPINION

Honorable Michael F.Q. San Nicolas
Chairperson, Committee on Aviation, Ground
Transportation, Regulatory Concerns and Future Generations
155 Hesler Street, Suite 203
Hagatna, Guam 96910

RE: Quorum Requirements for the Alcohol Beverage Control Board
LEG 13-0575

Dear Chairman San Nicolas

In your letter of July 19, 2013 you have requested our opinion whether under Section 3516 of Title 11 a meeting of two members of the Alcohol Beverage Control Board constitutes a quorum if the other three seats are vacant. In our memorandum to the Board dated May 17, 2013 we opined that three members are required for a quorum, but the Office of the Governor has opined that two members assembled in a meeting constitutes a quorum. To date we have not heard the argument for the latter opinion. Nonetheless, we will again address the question and attempt to state the argument for our contrary conclusion in greater depth.

Section 3516 reads as follows:

A majority of all the members of the Board shall constitute a quorum for the transaction of business, but the affirmative vote of a majority of all the members shall be necessary to determine any matter before it.

A quorum is the minimum number of members of a body that must be present before valid decisions can be made in the name of the body. This requirement arises from the desire to implement the principle of democracy within the agencies of government, namely, the majority has the right to rule. Since this is so, the decisions of a board should be an expression of the will of the majority of its members.¹ But the quorum requirement also permits boards to act despite vacancies within a Board or the absence of some of its members.

Correctly interpreting Section 3516 and thereby determining the quorum requirement for the Alcohol Beverage Control Board involves correctly determining the intent of the Legislature in enacting this section. Our research has not revealed any judicial interpretation by a Guam court of the meaning of this section or any quorum rule for any other agency of the Government of Guam.² Since the Guam Legislature does not make particular laws in a vacuum but with a backdrop of statutes on the same subject, we examined the statutory quorum requirements for every board within the government of Guam and saw two patterns.

For almost every agency its enabling act creates a body with a specified number of members. In the plurality of instances the Legislature states that a specific number that will constitute a quorum.³

The other pattern is a statement that “a majority of the members” will constitute a quorum.⁴ The disagreement in the present case about the required quorum arises from the ambiguity of the term “member.” Does this term mean the number of seats created by the enabling statute or does it mean the number of occupied seats? Where the text states without qualification that “a majority of the members” shall constitute a quorum, the reported state court decisions have construed the phrase to mean that a quorum is the majority of the current membership *without counting vacancies*. *Nesbitt v. Bolz*, 91 P.2d 879, 881 (Cal. 1939); *People ex rel. Funk v. Wright*, 71 P. 365, 366 (Colo. 1902); *State ex rel. Hatfield v. Farrar*, 109 S.E. 240 (W.Va. 1921). The rule is said to be the common law rule. Under this interpretation only two of a five-member board that has three vacancies could conduct business.

The foregoing rule being a common law rule, it is subject to being superseded by legislation. In cases involving the issue of the basis for determining the quorum, several state Supreme Courts have seen a legislative intent to include vacancies by the choice of words in the quorum requirement. For example, in *Clark v. North Bay Village*, 54 So.2d 240 (Fla. 1951), the charter of the village stated that the village would be “governed by a council of five” and that “[t]he council ... shall act in all matters upon a majority vote of those present, a majority of the council being necessary for a quorum.” The court saw an intention to include vacancies in determining a quorum.

There are several cases construing the legislative intent where the quorum is expressed as “a majority of *all the members*” or a “majority of *the whole*.” Those cases have uniformly held that vacancies must be counted. *Ross v. Miller*, 178 A. 771, 772 (N.J. 1935); *Kubik v. City of Chicopee*, 233 N.E.2d 219, 221 (Mass. 1967); *Gemeny v. Prince George's County*, 285 A.2d 602, 604 (Md. 1972); *Steiner, Inc. v. Town Plan and Zoning Comm'n of Town of Fairfield*, 175 A.2d 559, 561 (Conn. 1961). No reported case that we have found construing such language has held to the contrary, and the phrase appears to be a term of art.

Section 3516 is unique among all the Guam statutes related to quorum in that it states that a quorum must be “[a] majority of *all the members*.” (Emphasis added.) It is not found in any other agency-enabling legislation. This statute was enacted as part of the Guam Government Code of 1952. Guam Government Code § 25416 (1952). In 1976 in a formal opinion the Attorney General of Guam stated to the Alcoholic Beverage Control Administration that under Government Code Section 25416 where three vacancies exist upon the Alcohol Beverage

Control Board the two remaining members do not constitute a quorum. Op. Att’y Gen. No. 76-0012 (Nov. 18, 1976). This statute has never been amended and is now codified as 11 G.C.A. § 3516. If that formal opinion erred in its conclusion, it would seem that by now the Guam Legislature would have enacted legislation to clarify its intentions in using the term of art “majority of *all the members*” for this agency and no other agency.

Given the foregoing reasons and considerations, our office remains of the opinion that under Section 3516 of Title 11, G.C.A., three members of the Alcohol Beverage Control Board are required for a quorum.

Dångkolo na Si Yu’os Ma’åse.

Sincerely,



LEONARDO M. RAPADAS
Attorney General



MONTY R. MAY
Assistant Attorney General

Encl: Op. Att’y Gen. 76-0012 (Nov. 18, 1976)

¹ “The requirement of a quorum is a protection against totally unrepresentative action in the name of the body by an unduly small number of persons.” Robert’s Rules of Order (1981),

² The closest case that we found was *Gov’t of Guam v. Civ. Serv. Comm’n*, No. 86-00088A; 1987 WL 109892 (D. Guam App. Div. 1987). The case construed Section 4402 of Title 4, which set the number of Commissioners of the Civil Service Commission that is necessary for a quorum (4) and set the number of votes that must be cast (4). The Court interpreted the latter requirement to require four concurrent votes for any Commission action, the “Rule of Four.”

³ Here we will cite the statutes for selected agencies: Guam Election Commission, 3 G.C.A. §§ 2010(a), 2120(d) (7 members; quorum: 5); Civil Service Commission, (7 members; quorum: 4); Board of Trustees the Retirement Fund, 4 G.C.A. §§ 8138.1, 8138.3(d) (7 members; quorum: 4); Board, Guam Public Library, 5 G.C.A. §§ 80106, 80110 (7 members; quorum: 4); Board of Trustees of the Department of Chamorro Affairs, 5 G.C.A. § 87105(a), (d) (9 members; quorum:5); Territorial Parole Board, 9 G.C.A. §§ 85.10, 85.14 (7 members; quorum: 4)

⁴ Some selected agencies are the Chamorro Registry Advisory Board, 3 G.C.A. § 20026; Guam Decolonization Registry Board, 3 G.C.A. § 21026; Municipal Planning Council, 5 G.C.A. § 40130; Agricultural Board of Commissioners, 5 G.C.A. § 63806; Guam Invasive Species Council, 5 G.C.A. § 70106.

FORMAL OPINION # 12

November 18, 1976

To: Alcoholic Beverage Control Administration
From: Attorney General
Subject: Quorum Requirement for Alcoholic Beverage Control Board

You verbally requested my opinion as to whether the two of the five members of the Board can act on liquor license applications at the board's regular monthly meeting. You cited this office's memorandum of December 27, 1974 which stated that a majority of the remaining members of a board, after resignations or removals, is sufficient to constitute a quorum.

In the absence of any indication to the contrary, it is well established that a majority for quorum purposes means a majority of the whole number of authorized directors, or board members of a court or public corporation, and that this quorum requirement remains the same even though there may be vacancies. Cirrincone v. Polizzi, 220 N.Y.S. 2d 741, 743.; Opinion of Justices 12 Fla. 653; Snider v. Renehart 31 P. 716.

A different rule applies to a municipal governing body at common-law. There, when a vacancy occurred, a quorum consisted of a majority of the remaining members. However, even in municipal corporations, a statutory wording that "quorum consist^o a majority of all the members" supercedes the common-law rule and requires that the quorum be calculated on the basis of the authorized membership without any reduction for vacancies. Ross v. Miller, 178 A. 771, 772; Dombal v. City of Garfield, 30 A.2d 579.

Here, Guam Government Code § 25416 provides that "A majority of all the members of the Board shall constitute a quorum." Since § 25400 specifies five members for the Board, it is my opinion that three members are required to constitute a quorum notwithstanding the fact that vacancies exist. In

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this case, it is not necessary to **decide whether the court**
and corporate quorum rule **or the municipal rule shall apply**
as the result is the **same in view of the language of the**
statute.

^{the}
~~My~~ opinion of December 27, 1974 is revoked and superceded by
this opinion.

Charles H. Troutman

CHARLES H. TROUTMAN

Prepared By: