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The State of South Carolina



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January 17, 1985

The Honorable Joyce C. Hearn
Member, House of Representatives
432-A Blatt Building
Columbia, South Carolina 29211

Dear Representative Hearn:

By your letters of January 15, 1985, you have asked this office to advise you as to the requisite number of votes necessary for a seven-member board to convene in an executive session and for an administrative briefing. Each of the two actions will be addressed separately, following. In responding to your inquiry, we assume that there are no special circumstances to be addressed; that all members are present, entitled to vote, and actually vote; and that there are no by-laws, local rules or state statutes or local legislation which might supersede general law as enunciated in the Freedom of Information Act, Section 30-4-10 et seq., Code of Laws of South Carolina (1983 Cum. Supp.).

Executive Session

As stated in Section 30-4-60, all meetings of all public bodies must be open to the public unless closed pursuant to Section 30-4-70 of the Code. An executive session would be a meeting held by a public body which has been closed to the public for one or more of the reasons specified in Section 30-4-70(a):

(1) Discussion of employment, appointment, compensation, promotion, demotion, discipline or release of an employee or the appointment of a person to a public body; provided, however, that if an adversary hearing involving the employee, other than under a grievance procedure provided in Chapter 17 of Title 8 of the 1976 Code, is held such employee shall have the right to demand that the hearing be conducted publicly.

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(2) Discussion of negotiations incident to proposed contractual arrangements and proposed sale or purchase of property, the receipt of legal advice, settlement of legal claims, or the position of the public agency in other adversary situations involving the assertion against said agency of a claim.

(3) Discussion regarding the development of security personnel or devices.

(4) Investigative proceedings regarding allegations of criminal misconduct.

The procedure to be utilized when a public body wishes to convene in executive session is specified in Section 30-4-70(a)(5):

(5) Prior to going into executive session the public agency shall vote in public on the question and when such vote is favorable the presiding officer shall announce the purpose of the executive session. Any formal action taken in executive session shall thereafter be ratified in public session prior to such action becoming effective. As used in this item "formal action" means a recorded vote committing the body concerned to a specific course of action.

This statute is silent as to the requisite number of votes necessary to convene in executive session, however.

In the absence of a specified number of members necessary to take action, the general rule is that a simple majority vote is assumed to be required. 67A C.J.S. Parliamentary Law §8(b); Robert's Rules of Order Newly Revised §43; Op. Atty. Gen. dated July 26, 1983 (majority vote necessary to convene in executive session). According to Robert's Rules, §43, the word "Majority" means

"more than half"; and when the term majority vote is used without qualification ... it means more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions, at a regularly or properly called meeting at which a quorum is present.

Applying the general law as stated above to a seven-member board, a simple majority would consist of four members. Thus, an affirmative vote of four members would be necessary for the board to convene in executive session.

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Administrative Briefing

An administrative briefing is an executive session called for the purpose of receiving information or memoranda pertaining to some activity or other matter over which the board exercises supervision, control, jurisdiction, or advisory power. Section 30-4-70(b) provides the following requirements:

(b) Any public body may hold a closed meeting for the purpose of receiving an administrative briefing by an affirmative vote of three-fourths of its members present and voting when required by some exceptional reason so compelling as to override the general public policy in favor of public meetings; provided, that no budgetary matters shall be discussed in such closed session except as otherwise provided by law. Such reasons and the votes of the members shall be recorded and be matters of public record. No regular or general practice or pattern of holding closed meetings shall be permitted.

You have asked the number of members necessary to constitute the three-fourths vote of a seven-member board. The mathematical calculation of 7 times .75 equals 5.25; the question then to be addressed is whether the fraction is dropped or rounded to the next whole number.

The general rule as to determining percentages to calculate a quorum on the specified vote to take various actions is stated in 4 McQuillin, Municipal Corporations, §13.31(a):

If the required percentage of the members of a ... body consists in a certain number of whole votes and a fraction, it is necessary to count the fraction as a whole vote even though the result is a greater percentage of the body than would be the case if the ... body were equally divisible by such percentage into whole numbers.

See also Robert's Rules, §43.

This principle was applied by the South Carolina Supreme Court in Poore v. Gerrard, 271 S.C. 1, 244 S.E.2d 510 (1978). The Anderson County Council by a three - two vote dismissed the county attorney; by statute, a two-thirds vote was necessary for council to take such action. The court stated, "The record shows the attempt here to discharge was not by two-thirds vote and therefore ineffective." 271 S.C. at 5. Two-thirds of 5 members would equal approximately 3.3 members; the court obviously rounded 3.3 to the next whole number rather than dropping the fraction.

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The Supreme Court of Oklahoma addressed the same issue and applied the same principles in Bonney v. Smith, 194 Okla. 106, 147 P.2d 771 (1944). In Bonney, a town board was composed of three members. A statute required a three-fourths vote to adopt an emergency provision. The court held that the affirmative votes of all three members would be necessary for adoption of the provision, refusing to ignore or lop off the fraction resulting when 3 is multiplied by .75.

Applying general law as stated above to the seven-member board, an affirmative vote of six members would thus be necessary for the board to convene to receive an administrative briefing.

We trust that the above has satisfactorily responded to your inquiry. Please advise us if we may provide clarification or additional assistance.

Sincerely,

Patricia D. Petway

Patricia D. Petway
Assistant Attorney General

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REVIEWED AND APPROVED BY:

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