

L 5999/6584



The State of South Carolina
OFFICE OF THE ATTORNEY GENERAL

CHARLES M. CONDON
ATTORNEY GENERAL

May 4, 1999

The Honorable William C. Mescher
Senator, District No. 44
P.O. Box One
Pinopolis, South Carolina 29469

RE: Informal Opinion

Dear Senator Mescher:

Attorney General Condon has forwarded your opinion request to me for reply. You have informed this Office that at a meeting of the Berkeley County Legislative Delegation (hereinafter the "Delegation"), a vote was taken on the reappointment of a member of the Goose Creek Recreation Commission (hereinafter the "Commission"). The Delegation is composed of nine members. Six members of the Delegation were present at the meeting in question. Out of those six, four voted in favor of reappointment, one voted against reappointment, and one abstained. You have asked whether the number of favorable votes meets the statutory requirements for appointment of an individual to the Commission.

The Commission was created by Act No. 1093 of 1966. This Act was amended by Act No. 603 of 1971, which provides in part as follows:

Section 2. The commission shall be composed of seven members, **who shall be appointed by the Governor upon the recommendation of a majority of the Legislative Delegation of Berkeley County**, who shall serve for terms of four years or until their successors are appointed and qualify,
(emphasis added).

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As a general rule, in the absence of any statutory or other controlling provision, the common law rule to the effect that a majority of a whole body is necessary to constitute a quorum applies, and no valid act can be done in the absence of a quorum. Gaskin v. Jones, 198 S.C. 508, 18 S.E.2d 454 (1942). A majority of such body must be present to constitute a body competent to transact business. Id. If a quorum is present, a majority of a quorum is sufficient to act and bind the entire body. Id.

Here, six out of the nine members of the Delegation attended the meeting and thus a quorum was present. However, to answer your question, it must be determined whether the phrase "upon the recommendation of a majority of the Legislative Delegation of Berkeley County" signifies a departure from the common law rule mentioned above. In other words, does this phrase mean a majority of those present or a majority of the total membership of the Delegation.

When the legislature requires a specified vote of a proportion of a governing body, the requirement is met by that proportion of a quorum. City of Hiawatha v. Regional Planning Commission of Linn County, 267 N.W.2d 31 (Iowa 1978)(statutory language requiring a "majority vote of the planning commission" merely codifies the common law and was thus satisfied by a majority of the members present, assuming there was a quorum); McQuillin, Municipal Corporations, § 13.31.10 (3rd Ed. 1992)("unanimous consent of the council" requires unanimity of a quorum only). Put another way, a requirement for the concurrence or vote of a specified proportion or percent of "the council," or similar description of the governing body, in order for it to take any particular action has been construed to require the concurrence of that proportion or percent of the members present, there being a quorum, and not of that proportion or percent of all its members. C.J.S. Municipal Corporations, § 404. If, on the other hand, the legislature wants to require that decisions of a governing body be made only by a distinct proportion of the total membership of the body, this can be done by adding words such as "all of the members of" or "the members of" after the words "a majority vote of." City of Hiawatha v. Regional Planning Commission of Linn County, *supra* (designating a proportion of the members of a particular body is the usual way in which a legislature expresses its intention that decisions of the body be made by the designated proportion of the whole membership).

Based on the foregoing, since the phrase "upon the recommendation of a majority of the Legislative Delegation of Berkeley County" does not designate a proportion of the "members of the Legislative Delegation," but merely requires a "majority of the Legislative Delegation," the common law rules regarding quorums would govern. Therefore, in order to properly recommend an individual for appointment to the Commission, the individual

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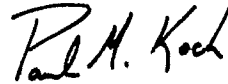
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would need to receive a majority vote of a quorum of the Delegation. In this case, it appears that the individual in question did receive a majority vote of a quorum and, therefore, was properly recommended for appointment by the Governor.

This letter is an informal opinion only. It has been written by a designated assistant attorney general and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion.

With kindest regards, I remain

Very truly yours,

A handwritten signature in black ink, appearing to read "Paul M. Koch". The signature is written in a cursive, slightly stylized font.

Paul M. Koch

Assistant Attorney General