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July 11, 1986

Ms. Elsie T. Kirby, Executive Secretary
Charleston County Legislative Delegation
Charleston County Office Building
2 Courthouse Square
Charleston, South Carolina 29401

Dear Ms. Kirby:

You have advised that the Charleston County Legislative Delegation is presently composed of five Senators and nine members of the House of Representatives, two positions in the House having been vacated and as yet unfilled. You have asked how to determine a majority votes of either the delegation or the Representatives, considering these two vacancies.

In examining the law relative to determining whether a quorum is present or the requisite member of votes have been obtained on an issue, it is readily apparent in many jurisdictions that courts have used the total original membership of the public body, vacancies or absences notwithstanding, as the basis for determining a quorum or majority vote. See, for example, Annot., 43 A.L.R. 2d 698, §§ 3, 4, 5, 6; 4 McQuillin, Municipal Corporations, §§ 13.27, 13.31; 56 Am. Jur. 2d Municipal Corporations § 169. There are, however, a great number of court decisions to the effect that the determination of a majority should be based upon the number of members present at a meeting or currently serving on the public body; the latter would also apply to determining whether a quorum was present. See Annot., 43 A.L.R. 2d 698, §§ 7, 8; 4 McQuillin, Municipal Corporations, §§ 13.27b, 13.32; 56 Am. Jur. 2d Municipal Corporations § 170. Thus, support may easily be found for either approach to determining a quorum or the requisite number for a majority.

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While the courts of this State do not appear to have answered exactly the question you have raised, thus casting some doubt upon our response, we have located some authority which permits the conclusion that the vacancies would not be considered in determining a majority vote.

In State v. Huggins, Harp. (16 S.C. Law) 139 (1824), eighteen managers of election were to convene to determine the validity of a contested election. Of the eighteen, two refused to serve, one died, and another was a candidate for the contested office and could not serve. The court held that eight of the fourteen remaining managers would be sufficient to convene a quorum to hear the election contest. The court relied upon the reasoning in State v. Deliesseline, 1 McCord 52 (1821), to determine the number necessary for a quorum.

Relying upon both of these decisions, former Attorney General McLeod opined in an opinion dated May 26, 1978 (enclosed) that when the Consumer Affairs Commission had only five members rather than the nine provided for by Section 37-6-502, Code of Laws of South Carolina (1976, as revised), those five presently constituted the Commission and a majority of those five would constitute a quorum. While the situations in the two cases and the McLeod opinion concerned how vacancies were to be viewed in determining a quorum rather than a majority vote, the principles and reasoning of these authorities would nevertheless apply to calculating a majority.

The term "majority vote," according to Robert's Rules of Order Newly Revised § 43 means, when used without qualification, "more than half of the votes cast by persons legally entitled to vote" Id., p. 339 (emphasis added). An individual who had resigned from his seat in the House or Senate would no longer be a member of the Delegation and would not be entitled to vote. Applying this definition, it would appear to be appropriate to disregard the two vacancies in calculating the number of votes necessary to obtain a majority.

Because the courts of this State have not definitively answered your question and further because much support may be found to either count or disregard the two vacancies, our conclusion cannot be free from doubt. We believe that a court faced with the issue would have sufficient support to conclude that the two vacancies would not be counted in determining a majority vote of either the Delegation as a whole or the Representatives as a group.

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We trust that the foregoing has satisfactorily responded to your inquiry. Please advise if additional assistance or clarification should be needed.

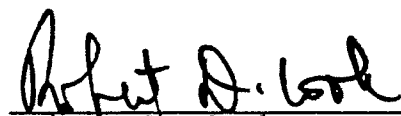
Sincerely,

Patricia D. Petway
Patricia D. Petway
Assistant Attorney General

PDP/an

Enclosure

REVIEWED AND APPROVED BY:



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