

1982 WL 189163 (S.C.A.G.)

Office of the Attorney General

State of South Carolina

February 9, 1982

*1 John H. Tiencken, Jr., Esquire
Berkeley County Attorney
Post Office Box 817
Moncks Corner, South Carolina 29461

Dear Mr. Tiencken:

In response to your request for an opinion from this Office regarding a provision of the Rules for Berkeley County Council (Council) that requires a majority vote of the entire membership of the Council as opposed to a majority of those members present in order to transact business, my opinion is that such a provision is of questionable validity as, according to my understanding, it is currently being interpreted. The authority of a county council 'to determine its own rules' pursuant to [Section 4-9-110, CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended, does not give a county council the authority to adopt a rule which conflicts with or derogates from another statute, including the statute which authorizes the supervisor 'to vote in case of council ties.' [§ 4-9-420\(8\), CODE OF LAWS OF SOUTH CAROLINA](#), 1976, as amended. The provision in question does derogate from the statutory authority of the supervisor to vote in case of council ties because in effect it limits his eligibility to vote to the situation where there is a four-four council vote. As I understand the operation of the rule, in the case of a three-three vote or a two-two vote, the supervisor would not be allowed to vote because a majority 'of the Council members' would not have approved the matter.

The authorities agree, however, that if a quorum is present, in this case, five members, then a majority of those present, in this case, three, can take action, to wit:

Following the rule of the common law, in the absence of applicable charter or statutory provision to the contrary, a majority of a definite body, . . . , the council, etc., consisting of a definite number, when duly met, constitute a quorum for the transaction of business, and the vote of a majority of those present (there being a quorum) is all that is requisite for . . . the doing of [an] act which the body has power to do. . . . Where the law is silent on the subject the common law rule will prevail and cannot be changed by the council, Neither can it be changed by rule. 4 McQUILLIN MUNICIPAL CORPORATIONS § 13.27 at 544.

The requirement that an affirmative vote of a majority of all members of a legislative body shall be necessary for the adoption of any resolution abrogates the common-law rule that a majority of those voting, in the presence of a quorum, can act for such body. *Id.* § 13.31b at 553.

This general rule is recognized in South Carolina. *See, Gaskins v. Jones*, 198 S.C. 508, 18 S.E.2d 454 (1942). Accordingly, a Council rule which conflicts not only with this general rule but also with a specific statutory provision [[§ 4-9-420\(8\)](#)] is not enforceable in my opinion.

With kind regards,

Karen LeCraft Henderson
Deputy Attorney General

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