

## Quorum: Official Action – Abstention

With regard to the number of members of a municipal governing body that is needed to constitute a quorum or the number of votes that is required for official action, the provisions, if any, of the respective municipal codes will prevail. For example, concerning the establishment of a quorum, the municipal codes provide as follows:

- In third class cities, a majority of the whole number of council members physically present at a meeting place within the city will constitute a quorum.<sup>1</sup>
- In cities operating under an optional third class city charter, a majority of the whole number of members of the council constitutes a quorum.<sup>2</sup>
- In boroughs, a majority of the membership of council then in office and physically present constitutes a quorum.<sup>3</sup>
- In townships of the first class, a majority of the members of the board of commissioners constitutes a quorum.<sup>4</sup>
- In townships of the second class, a quorum is two members of a three-member board of supervisors or three members of a five-member board of supervisors.<sup>5</sup>

Pennsylvania generally follows the common law rule under which a majority of the members of a municipal governing body constitutes a quorum. The common law also provides that the vote of a majority of those present, provided there is a quorum, is deemed sufficient for action by a governing body.

Pennsylvania follows the common law rule that in the absence of any language to the contrary in the enabling statute, action may be taken by a majority of the members of the governing body present and voting as long as a quorum is present.<sup>6</sup> Some statutes also require a supermajority of all of the members of a body to take specific action, such as the abolition of the elected auditors and establishment of an appointed auditor in a borough.<sup>7</sup>

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<sup>1</sup> The Third Class City Code, 11 Pa.C.S. § 11004.

<sup>2</sup> Optional Third Class City Charter Law, Act 399 of 1957, § 607 (53 P.S. § 41607).

<sup>3</sup> Borough Code, 8 Pa.C.S. § 1001.

<sup>4</sup> The First Class Township Code, Act 331 of 1931, § 702 (53 P.S. § 55702).

<sup>5</sup> The Second Class Township Code, Act 69 of 1933, § 603 (53 P.S. § 65603).

<sup>6</sup> *Stoltz v. McConnon*, 473 Pa. 157 (1977).

<sup>7</sup> 8 Pa.C.S. § 1005(7).

*Caution: The common law rule does not apply to second class townships. A second class township can only take action by a majority vote of all of the members of the board of supervisors, not a simple majority of those present if only three members of a five-member board are voting.*<sup>8</sup>

Thus, with regard to the effect of abstaining from voting, unless otherwise specified in statute, a majority of the votes actually cast is all that is required for official action, so long as there is a quorum present. This is the case, even if as a result of the abstentions, the total number of votes cast is less than the number of members required for a quorum, and the number of favorable votes is less than a majority of the actual number of members present.

A discussion of this issue is set forth in 36 Standard Pennsylvania Practice, 2<sup>nd</sup> edition, Section 166:50 (2020), as follows:

[A] majority of any board or commission constitutes a quorum.<sup>9</sup> A majority of those voting in the presence of a quorum can act for a board or other body, absent language to the contrary in the relevant enabling statute.<sup>10</sup> A board is composed of those members serving and voting, not the number authorized to serve on a board; thus, absent specific legislation to the contrary, a board may act if there is a quorum.<sup>11</sup>

Illustration: A vote by two members of a state health facility hearing board was sufficient to affirm the Department of Health's grant of a certificate of need to a health-care facility, even though the Health Care Facilities Act had been amended to state that the board would consist of five members; because only three members were in fact present and eligible to participate in the decision, a majority vote of that number was sufficient.<sup>12</sup>

Except where a statute provides otherwise, Pennsylvania follows the common-law rule in determining the number of votes necessary for a deliberative body to take official action. So long as a quorum is present at a meeting, therefore, all that is required is that the highest vote be equal to a majority of the quorum number, even though the highest vote constitutes only a plurality of all the legal votes cast. This is true even if more than the quorum number is present at the meeting.<sup>13</sup>

Illustration: If there are seven members of a body and four of those members constitute a quorum and attend a meeting, a majority of the four, that is, three, is

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<sup>8</sup> The Second Class Township Code, § 603. *See also Sbeipe v. Orlando*, 559 Pa. 112 (1999).

<sup>9</sup> 1 Pa.C.S. § 1905(b).

<sup>10</sup> *Com. ex rel. Bagnoni v. Klemm*, 499 Pa. 566 (1982).

<sup>11</sup> *Mercy Regional Health System (formerly Mercy Hosp.) of Altoona v. Department of Health*, 645 A.2d 924 (Pa. Cmwlth. 1994).

<sup>12</sup> *Id.*

<sup>13</sup> *DiGiacinto v. City of Allentown*, 486 Pa. 436 (1979).

necessary to take official action of any kind. Even if all seven members attend the meeting, the same number of votes, namely three, is all that is necessary to take official action if that is the highest number of votes cast in a given matter. Thus, if the minimum quorum of four is present, and the vote on a particular proposal is three in favor and one against, the proposal is adopted, and if all seven members of the body attend and the vote on a particular issue is three in favor, one against, and three abstentions, the proposal is likewise adopted by the plurality vote.<sup>14</sup>

The common-law quorum rule does not permit a member to attend and abstain from voting, and yet demand that the highest number of votes required to take official action be more than if that member had been absent.<sup>15</sup>

The Third Class City Code and the Borough Code further permit council to provide for the participation of its members in council meetings by means of a telecommunication device,<sup>16</sup> subject to certain conditions, if a majority of council members<sup>17</sup> are physically present at the advertised meeting place within the municipality and a quorum is established at the convening or reconvening of the meeting.<sup>18</sup>

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<sup>14</sup> 486 Pa. 436.

<sup>15</sup> *Id.*

<sup>16</sup> *See* The Third Class City Code, 11 Pa.C.S. § 11005; Borough Code, 8 Pa.C.S. § 1001(c).

<sup>17</sup> In the case of a borough, participation by telecommunication is limited to council members and not extended to the mayor. *See* 8 Pa.C.S. § 1001(c).

<sup>18</sup> *But see*, Act 15 of 2020. Due to the dangers associated with physical proximity during the COVID-19 pandemic, the General Assembly enacted legislation waiving any physical quorum requirements during the COVID emergency.