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Quorum of Standing Committees

1 message

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Fri, Jul 22, 2011 at 3:10 PM

To: Robert Kosin <rkosin@barringtonhills-il.gov>

Cc: "Horner, Susan M." <shorner@burkelaw.com>

Bob—you have asked whether the standing advisory committees of the Village (i.e. communications committee, beautification committee, legal committee, etc) can transact business if less than a majority of the members are present. Since these committees are not bound by the municipal code or the Village Code, they can by rule or by-law establish a smaller number to constitute a quorum. See Robert's Rules below. Each of those committees can adopt their own rules of procedure including the number of their members necessary for a quorum. Any further questions, please call.

A Quorum of an assembly is such a number as must be present in order that business can be legally transacted. The quorum refers to the number present, not to the number voting. The quorum of a mass meeting is the number present at the time, as they constitute the membership at that time. The quorum of a body of delegates, unless the by-laws provide for a smaller quorum, is a majority of the number enrolled as attending the convention, not those appointed. **The quorum of any other deliberative assembly with an enrolled membership (unless the by-laws provide for a smaller quorum) is a majority of all the members.** In the case, however, of a society, like many religious ones, where there are no annual dues, and where membership is for life (unless it is transferred or the names are struck from the roll by a vote of the society) the register of members is not reliable as a list of the bona fide members of the society, and in many such societies it would be impossible to have present at a business meeting a majority of those enrolled as members. Where such societies have no by-law establishing a quorum, the quorum consists of those who attend the meeting, provided it is either a stated meeting or one that has been properly called.

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MEMORANDUM
PRIVILEGED AND CONFIDENTIAL
ATTORNEY WORK PRODUCT
ATTORNEY CLIENT COMMUNICATION

TO: Robert Kosin and Sarah Kenney
FROM: Susan Horner
RE: OMA/quorums
DATE: July 15, 2011

You asked for a memorandum regarding the affect of vacancies on Village boards or committees with respect to quorums under the Open Meetings Act.

Quorums

A quorum is a majority of a given board or committee's authorities. *See, e.g.*, VILL. CODE OF BARRINGTON HILLS, § 1-5-14. Under the OMA, any gathering of a majority of a quorum – whether in person or by video or audio conference, telephone call, or electronic means (such as, without limitation, electronic mail, electronic chat, and instant messaging), or other means of contemporaneous interactive communication – is a "public meeting." 5 ILCS § 120/1.02.

For example, the Village's Board of Trustees consists of seven members: the Village President and six trustees. A quorum of these authorities would be four, and a majority of the quorum would be three. Therefore, under the OMA, whenever three or more members of the Village Board meet, it is a "public meeting." It must be held open to the public and proper notice must be provided, subject to the exceptions provided for in the OMA.

There is one exception to the rule: five-member bodies. Five-member bodies can meet one-on-one without triggering the OMA's "public meeting" requirement. 5 ILCS § 120/1.02. This is because the definition of "meeting" under the OMA was specifically amended in 2007 to state that a meeting of a five-member body occurs when a quorum, not a majority of a quorum, gathers to discuss public business. *Id.* For example, the Village's Equestrian Commission consists of five members. Under the exception to the OMA, any two of the Equestrian Commission's members can meet one-on-one to discuss public business without violating the OMA. This exception does not apply to smaller public bodies. For example, if a board or committee consists of four members, a quorum requires three members; a majority of the quorum is two members. Therefore, no two members of that board or committee could discuss the business outside of an open public meeting with proper notice, subject to the exceptions provided for in the OMA.

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Vacancies

Illinois courts have not addressed how vacancies affect quorums with regard to the OMA. They have addressed them with regard to validity of board or committee action. *See, e.g. McLean v. East St. Louis*, 222 Ill. 510, 515 (1906) (vacancies do not diminish the number required to take action when the requirement is for a majority of all members). In addition, there is no provision in the Village or Municipal Code that allows vacancies¹ on a board or committee to alter the requirements for a quorum. *But see* VILL. CODE OF BARRINGTON HILLS, § 1-5-14(B) ("Power Of Majority: The action of the board of trustees shall be controlled by a majority vote of those present; provided that, for all ordinances and any resolution or motion to create any liability against the village or for the expenditure or appropriation of any money, the concurring vote of a majority of all members then holding office, including the president, shall be required.")

Recommendation

Because this is an open question, we recommend that, for the purposes of the OMA, you calculate the quorum of a given board or committee based on its current membership rather than its potential membership, and consider that the threshold for a "public meeting."

¹ "Vacancy" is a term of art. If you need information regarding what constitutes a vacancy, please let me know.