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## Coates' Canons Blog: “Official Conduct” – More on Excusing Board Members From Voting

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Article: <https://canons.sog.unc.edu/%e2%80%9cofficial-conduct%e2%80%9d-%e2%80%93more-on-excusing-board-members-from-voting/>

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A few of my posts have discussed the limited bases upon which city and county board members may be excused from voting, and the lack of clarity in the statutes about how this should be done. I've mostly focused on the statutory provisions dealing with matters involving consideration of a board member's "own financial interest." The other category in the city and county voting statutes is matters involving a board member's "official conduct." What kinds of questions might allow a member to be excused from voting under this category? There is no case law interpreting this provision. I can think of two possible scenarios in which this provision might come into play. The first scenario could come about when a board decides to officially express its disapproval, as a board, of something a board member has done. The scope and nature of sanctions a board may impose on one of its members is somewhat unclear (a topic for a future blog post). There is certainly authority – either pursuant to a local policy or even without one – for a board to initiate a vote of censure or other process that amounts to an expression of disapproval by the board. In such a case, the board would be voting to express its collective view about an action of a particular board member, so the question before the board would be a matter involving that member's official conduct.

A second scenario might be a vote on whether to excuse a member from voting on a matter involving his or her own financial interest – the other ground stated in the statutes. The vote on whether to excuse the member because of an alleged financial interest would appear to be a matter involving that member's own official conduct (i.e., the conduct of voting or not voting on the matter) although in this case, it's conduct that hasn't yet occurred.

It's easy to see that the question of whether the member with the alleged financial interest can vote on whether he or she should be excused can become an endless loop. As noted in my last post, there are a few different options for the process of excusing a member from voting. Assuming that the purpose of the statutes is to preserve the integrity of the voting process, while at the same time imposing on board members an obligation to vote on most issues, it seems appropriate for the member *not* to vote in either of these two circumstances. It seems possible that in a case of censure, and in some cases involving financial interest, the affected board member may want to assert his or her right to vote. On the other hand, it may be most practical and true to the purpose of the statute for the board to be able to vote on these matters without the affected board member's participation.

## Links

- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_160A/GS\\_160A-75.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-75.html)
- [www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter\\_153A/GS\\_153A-44.html](http://www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-44.html)