
Coates' Canons Blog: Approving Minutes of Meetings You Didn't Attend

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The closed session meeting was contentious. Three of the five board members were ready to fire the manager. They were going off the board and were anxious to push for a vote on the dismissal before the election in November. The final vote was taken in open session and the manager was out. Then, new members took office. At the January meeting, the consent agenda includes approval of the November and December meeting minutes, including the minutes and general account of the closed session about the manager. The three new members are reluctant to vote on the approval of the November minutes. They are not sure whether they can, legally, or should, politically, vote on minutes of a meeting they did not attend. Furthermore, they do not support the firing and do not want to create the impression that they approve of what was done. Are the new members allowed to vote? If so, is there a legal basis for them to be excused from voting based on their concerns about the actions taken?

This blog post reviews the concept of a local government as a continuous entity, the need for and meaning of the approval of minutes, and the ongoing power of boards to create and maintain an accurate record of their proceedings.

Local Governments as Continuous Entities

The answer to the legal question posed above is that board members legally may approve minutes of meetings that took place before they were elected. Members also *should* do so, unless they have specific, reliable information or evidence that they are not accurate. This result flows from the legal recognition of a local government as a continuous body, even though the individuals who serve on its governing board change over time.

My long time colleague and expert in local government law, Fleming Bell, explains it like this: "I liken the board to a train, running on a track that begins at the time that the local government was created and extends indefinitely into the future. The passengers on the train are the board members, and the engineer is the presiding officer. Whenever board members or presiding officers (passengers or engineers) leave office, they get off the train. The new board members or presiding officers take their places as passengers or engineers. The train, however, continues existing and moving along. As the train continues to exist and move along, so the local government and the governing board as an entity continue to exist and move indefinitely into the future. Carrying the analogy further, just as the train can only act through its current passengers and engineer, so the local government can only act through its current board and presiding officer. The current board is the only body that can approve the minutes at any given point in time. When persons leave the board, they lose their ability to vote on approving the minutes even of meetings in which they participated, and when new persons join the board, they become empowered to approve the minutes even of meetings that they did not attend." Well put, Fleming!

As stated (less colorfully) in McQuillin *The Law of Municipal Corporations* "A municipal governing body is generally considered to be a continuous body regardless of changes in its personnel ... Accordingly, proceedings that have been lawfully begun by a preceding council can be prosecuted by succeeding councils until completed and made effective." 4 McQuillin *Mun. Corp.* § 13:60 (3d ed.). North Carolina cases have recognized the continuity of local governments. In *Norfolk Southern R.R. v. Reid*, 187 N.C. 320 (1924), the dispute centered upon the validity of a tax levy approved by the board of county commissioners, and the issue turned on whether the tax rate was accurately described in the board minutes. The court noted that the current board has an inherent right to correct the journal of the county's proceedings. In a subsequent decision involving the same issue the Court said, "We have held that while a board of county commissioners cannot with retroactive effect change a tax which it has purposely imposed in the way the law prescribes, it may correct an erroneous entry upon the minutes so that the record shall, in the language of the law, 'speak the truth' concerning the tax." *Atlantic Coast Line R. Co. v. Lenoir County*,

200 N.C. 494 (1931). If the board that is presently sitting has the power to *correct* the minutes of prior boards, then presumably it can also *approve* the minutes of boards that came before it as well.

The continuity of municipal corporations explains other commonly recognized principles, such as the binding nature of contractual and other commitments by one board on future boards. (For more on what does and doesn't bind future boards, see my blog post [here](#).) North Carolina courts have also recognized continuity within specific proceedings begun by one board and completed by another. See, for example, *Cox v. Hancock*, 160 N.C. 473 (2003) and *Brannock v. Zoning Board of Adjustment*, 260 N.C. 426 (1963), holding that a change in membership of the board of adjustment during the permitting process did not break the continuity of the board and the permit was validly issued because information and evidence was shared with new members prior to the decision.

Must New Members Vote to Approve Minutes?

Members clearly have authority to approve minutes of meetings they did not attend. But what if they feel uncomfortable doing it. What if they strongly object?

First, it's important to understand what it means to approve the minutes. It's not an approval of what was done. It simply confirms that the minutes are an accurate record of what took place. Second, it's important to note that board members generally have a duty to vote, and may be excused from voting only on matters involving their own financial interest or their own official conduct. Neither of these excuses from voting fit a situation where a person prefers not to vote on approval of minutes because he or she was not at the meeting, or even on the board, when the meeting took place. Along these same lines, the statute doesn't allow an excuse for a member who objects to the decisions reflected in the minutes that are up for approval. So yes, board members have a duty to vote on minutes of meetings they did not attend.

Options for Approving Minutes

So what options are there? A new member could cast a symbolic "no" vote, but this could have more than symbolic effects. What if a majority of the board votes against approval of the minutes? As described [here](#), the purpose of minutes is to document actions and decisions in an official and reliable record. The failure to prepare or approve minutes doesn't necessarily affect the validity of decisions made or actions taken at the meeting, (see this blog post by David Lawrence), nor does the failure to sign them, as noted in another post [here](#). On the other hand, minutes that have not been approved are not really minutes. Only if they are approved can they serve as the legally recognizable record of the meeting. A draft of minutes that has not been approved might still provide some evidence of what occurred, but without having been approved, it cannot be considered the official record of the actions taken. Again, this is an issue only if a majority votes "no."

Another option, especially for a city board member, would be to refrain from voting without being excused. By law, that is counted as a "yes" for North Carolina city governing boards, as well as for some county governing boards that have adopted this procedure locally. Board members who feel uncomfortable approving something about which they do not have first hand knowledge may prefer a "yes" vote by operation of law.

If there are incumbent members of the board present, another option would be to have a discussion before the vote, during which those who attended the meeting could vouch for the accuracy of the minutes. It is certainly reasonable for new members to rely on the representations of the clerk and the other members when approving minutes of prior meetings.

When Must Minutes Be Approved?

A final point is that these issues can be avoided, and often are, by making sure that minutes are prepared and approved in a timely fashion. The statute that requires minutes says nothing about when they must be prepared or approved. Backlogs can easily occur especially when there are limited staff resources. Ideally, though, an effort should be made to have most minutes approved by the members who attended the meetings, before they get off the train and new ones climb aboard.

Links

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