
Coates' Canons Blog: Calculating Majorities

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Three members of a five-member city council are meeting to discuss city business. Is that a majority? You'd think this would be an easy question, but the answer depends on the context for the question. The basic definition of "majority" is more than half. (The **official Robert's Rules of Order Website** has a **discussion about reasons** to avoid using any other definition for board procedures.) The question is, more than half of what? And for what purposes are we asking the question? This blog post discusses majorities in two specific contexts: 1) When is there a majority for purposes of the statutes that define a quorum? and 2) When is a majority present under the open meetings law for purposes of determining whether a meeting constitutes an official meeting of a public body?

Quorum Statute Majorities

For cities, **G.S. 160A-74** defines a quorum as "A majority of the actual members of the council, plus the mayor, excluding vacant seats." Although some interpret this provision to mean that the mayor must always be present in order for there to be a quorum, that reading doesn't really make practical sense. (If that were the case, what would be the point of a Mayor Pro Tem?) Instead, it means that you count the mayor for purposes of determining the number of members. My colleague Fleming Bell often teaches this by describing it as a simple math problem: Total number of board members + mayor – vacancies = X; Quorum is majority of X. The math is even simpler for counties. Under **G.S. 153A-43** a quorum is a majority of the membership of the board of commissioners, and the statute specifically says that you don't consider vacancies.

So back to our example: if the city council has five members and a mayor, then there are a total of six members under the quorum statute, and a majority is four. The calculation is the same regardless of whether the mayor votes on all matters or only in the case of a tie. Assuming there are no vacancies, the group of three members meeting to discuss city business does not constitute a quorum. That means that if they discussed and purported to act on city business, their actions would not be legally binding on the city. Board actions must be taken in a legally convened meeting, with a quorum present.

Open Meetings Law Majorities

The result is different under **North Carolina's open meetings law**, which requires notice of official meetings of public bodies. The notice requirements are triggered (depending on the type of meeting involved) when a "majority" of the members of a public body gather together or simultaneously communicate about the business of the public body. A public body is defined as any elected or appointed authority, board, commission, committee, council, or other body of the State or local government that has two or more members, and that exercises any of a broad range of functions listed in the statute. (See **143-318.10(b)**) It's important to remember that the "two or more members" is what defines a public body – it's not the number you use to determine whether a majority is present.

Here's the confusing part: a majority under the open meetings law is not necessarily the same as a majority under the quorum statute discussed above. The legislature could have required notice of official meetings only when a quorum is present, but that's not what the statute says. Indeed, the open meetings law applies to many public bodies that are not governed by any statutory quorum requirements, including committees of public bodies. Instead, the concept of majority under the open meetings law is the more basic "more than half" definition to be applied with an eye toward the specific purpose of the statute. That purpose is to prevent decision-making from occurring behind closed doors, except in those cases where the statutes specifically authorize closed sessions. With this in mind, a majority under the open meetings law is determined by considering whether the number of people meeting is sufficient to effect a result – an "effective majority" – such that they could agree to a position or plan in private and then, in a later public meeting, carry the day based on the agreed upon plan. This means that what constitutes a majority can change depending upon the particular public body, and

perhaps, on the particular matter at issue.

In our example, the three members of the five-member board could carry the day in those cities where the mayor votes only in the case of a tie. In that case, the meeting would trigger the notice requirements under the open meetings law, even though the group doesn't constitute a quorum. In a city with a voting mayor, however, the three members would not constitute an effective majority, and therefore, no notice requirements would apply to their meeting.

Other factors might affect whether a particular group constitutes a majority under the open meetings law. For example, if one seat is vacant and the remaining members are divided evenly on a matter, a meeting with two members and the mayor who votes only in case of a tie could be considered an effective majority for purposes of the open meetings law. Or if two members of the five-member council have conflicts of interest and are prohibited from voting on the matter involved, a meeting of two members of the board could constitute a majority.

Calculating and Doing the Math

Calculating a majority for purposes of a quorum is simply a matter of doing the math. The inquiry under the open meetings law is more about determining whether members of a public body might have the ability, behind the scenes, to do some calculating of their own, and if so, whether it all adds up to a violation of the law.

Links

- www.robertsrules.com/default.html
- www.robertsrules.com/faq.html#4
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_160A/GS_160A-74.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_153A/GS_153A-43.html
- www.ncleg.net/EnactedLegislation/Statutes/HTML/BySection/Chapter_143/GS_143-318.10.html