
Coates' Canons Blog: Do Mayors Have a Duty to Vote?

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Article: <https://canons.sog.unc.edu/do-mayors-have-a-duty-to-vote/>

This entry was posted on November 07, 2013 and is filed under Board Structure & Procedures, Conflicts Of Interest, Ethics & Conflicts, Open Government, Open Meetings, Quorum & Voting Requirements

North Carolina holds its local government board members' feet to the fire when it comes to voting. City council members and county commissioners have a legal duty to vote unless they are excused for any of several grounds allowed under the statutes. The statutes do not authorize board members to abstain. In cities, if a member abstains he or she is recorded as voting in the affirmative.

What about mayors? Does a mayor who votes only in the case of a tie have a duty to vote? If she doesn't vote does it count as a yes? What if the mayor has a conflict of interest? May she be prohibited from breaking a tie?

To answer these questions, we must consider two separate statutes. First, G.S. 160A-75 (the council member statute) delineates the voting requirements for city council members. This statute allows members to be excused from voting only on matters involving their own financial interest or official conduct, and in cases where certain listed state statutes prohibit them from voting. Unless excused for one of these reasons, if a council member leaves a meeting without being excused from the meeting and does not vote, or is present and does not vote, that member is counted as voting yes. The limited authority for being excused, combined with the "no abstention" rule creates a duty to vote for council members.

A second statute, G.S. 160A-69 (the mayor statute) delineates voting requirements for mayors. Most mayors are separately elected by the voters, but some are chosen by the council from among its members. The mayor statute establishes different rules for each type of mayor. It says that mayors "have the right" to vote only when there are equal numbers of votes in the affirmative and the negative. Mayors who are elected by the council "have the right" to vote on all matters, but have no right to break a tie vote in which they participated. It is important to note that some city charters may contain different rules for mayor voting.

A separately elected mayor's voting powers are exclusively addressed in the mayor statute. That statute authorizes, but does not require a mayor to break a tie. Voting by separately elected mayors is not governed by the council member statute therefore the duty to vote does not apply to their voting. They may choose to break a tie, but if they choose not to, they are not recorded as voting "yes." Instead, the tie vote stands and the motion fails.

A mayor who is elected from among the members of the council, however, remains a member of the council, and the rules in the council member statute still apply. Council-member mayors have a duty to vote along with the other members. Do council-member mayors have a duty to vote to break a tie? The prohibition on voting to break a tie on a matter in which the mayor participated might be interpreted to imply that council-member mayors have the right to vote to break a tie if they *did not* participate in the initial vote. The duty to vote under the council member statute essentially prevents this situation from occurring. The council member statute requires them to vote with the rest of the council, and counts them as voting yes if they abstain. A better interpretation is that the legislative purpose of the prohibition on double voting is to explicitly reject the holding in an early Supreme Court case which allowed it. (See *Markham v. Simpson*, 175 N.C. 135 (1918).)

What if the mayor has a conflict of interest? Do the conflict of interest provisions in the council member statute apply to mayors? That statute *prohibits* members from voting as required under several listed statutes: G.S. 14-234 (direct benefit in contracting), 160A-381(d) (legislative zoning decisions), and 160A-388(e2) (quasi-judicial decisions). These laws create an independent basis for prohibiting the vote. They apply to any member of the council, as well as a separately elected mayor when she would be voting to break a tie.

The voting statute also *allows* council members to be excused from voting on matters involving their own financial interest or their own official conduct. The statute does not explicitly *require* council members to be excused in these situations.

These provisions are properly understood in the context of the duty vote. They delineate the acceptable grounds for not voting, and the duty to vote applies in every other instance. A council-member mayor is subject to these provisions in the same manner as the rest of the council. It follows that a council-member mayor who is excused from voting on a matter under the statute will be ineligible to break a tie vote on that matter.

A separately elected mayor has no duty to vote to break a tie and can abstain, in effect, without being excused from voting. What if the mayor is inclined to vote but council members feel that the matter involves the mayor's own financial interest or official conduct? There is no mechanism for "excusing" or otherwise preventing a separately elected mayor from voting to break a tie on matters involving their own financial interest or official conduct. (Indeed, as noted in my earlier blog post on excusing board members from voting it's not even clear that the council can *prevent* a council member from voting.) There's a good argument, however, that mayors should adhere to the same standard that applies to council members. North Carolina cases have recognized financial conflicts as a matter of common law. In addition, state mandated ethics policies generally include standards for avoiding conflicts of interest. It may be prudent for a mayor to disclose potential conflicts in the same way other council members would, and to refrain from exercising the right to vote to break a tie when a conflict exists.

Links

- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-75
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-69
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=14-234
- www.ncga.state.nc.us/gascripts/statutes/statutelookup.pl?statute=160A-381
- www.ncleg.gov/EnactedLegislation/Statutes/PDF/BySection/Chapter_160A/GS_160A-388.pdf
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