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## Coates' Canons Blog: Quorum Calculations: The Impact of Vacancies and Members Who Don't Vote

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The Town of Bomont has a problem: for several weeks now large numbers of teenagers have been meeting on downtown sidewalks every Saturday morning to form “dance mobs.” The youths make it almost impossible for pedestrians to access many of the stores located in the downtown area, and the merchants who own those establishments have seen a big drop in Saturday sales since the weekly dance mobs began.

Councilmember Shaw Moore believes that the teenagers who take part in the dance mobs are “hooligans” in need of a comeuppance. He and five other councilmembers make up the town council’s committee on public safety, of which Mr. Moore is the chairman. With input from the town attorney, Mr. Moore drafts an ordinance that would prohibit dancing on downtown streets by groups of more than three people. He wants the committee to endorse the proposed ordinance at its upcoming meeting so that the council will be in a position to adopt the ordinance next month. On the night before the committee meeting, one of the six members unexpectedly resigns, effective immediately. When Mr. Moore arrives for the meeting the following day, only two other members are in attendance. One of them informs Mr. Moore that she needs to be excused from any action on the proposed ordinance because she owns an ice cream stand that – unlike other downtown businesses – profits handsomely from the weekly gatherings of teenage dancers. Despite his eagerness to proceed with the meeting, Mr. Moore concludes that the committee lacks a quorum. Is he correct?

### Figuring a Quorum

The term “quorum” refers to the minimum number of members who must be present for an assembly to conduct business lawfully. State law specifies the method of calculating the quorum for a city council or board of county commissioners. Click here for a discussion of those statutory quorum requirements by my colleague Frayda Bluestein.

Of course, local governing boards make wide use of committees and appointed boards, such as boards of adjustment, boards of health, and boards formed to advise city councils or boards of county commissioners on designated matters. For the most part, state law is silent regarding the quorum for such bodies. (There are exceptions. G.S. 130A-35(f) declares that the quorum for a county board of health consists of a majority of its members.) Consequently, the first step in identifying the quorum for a committee or appointed board will usually be to find out whether the governing board has adopted a rule imposing a method of quorum calculation.

The quorum requirements adopted by a governing board for its committees and appointed boards can vary depending on the type of body to which it applies. As my colleague David Owens has observed in a separate blog post, some local governments set the quorum for a board that hears variance requests at four-fifths of the board’s membership. The reason for this is that a variance request may not be granted without the approval of four-fifths of the board, so it makes sense to require the presence of the minimum number of members necessary to grant the requested relief.

Either as a matter of policy or practice, local governing boards usually turn to a particular source of parliamentary procedure – *Robert’s Rules of Order Newly Revised* (“RONR”) is the most popular choice – when their local rules fail to answer a specific procedural question. If the governing board’s procedural rules don’t address how to go about calculating the quorum for a committee or appointed board, the governing board’s fallback authority for parliamentary matters should be examined for guidance.

The default rule in RONR is that the quorum for a committee or board is a majority of its members. RONR (11<sup>th</sup> ed.), p.

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347, ll. 12-19. (In this context, the term “majority” simply means more than half.) Other prominent authorities on parliamentary procedure take the same or a similar position. For those local governments that rely on *Mason’s Manual of Legislative Procedure*, for instance, the default rule is that “the majority of the [body’s] membership . . . constitutes a quorum.” *Mason’s*, § 500.2 (2010 ed.). My colleague Fleming Bell likewise defines a quorum as “a majority of the actual membership of the board” in his *Suggested Rules of Procedure for Small Local Government Boards*.

### **The Effect of Vacant Seats on a Quorum**

Simply saying that a quorum is a majority of a body’s members or membership doesn’t explain how vacancies should be treated in a quorum calculation. For city and county governing boards, this issue is addressed by statute. Pursuant to G.S. 160A-74, vacant seats aren’t counted in quorum determinations for city councils. The opposite is true for boards of county commissioners: G.S. 153A-43 provides that the number of commissioners required for a quorum “is not affected by vacancies.” The blog post by Frayda Bluestein linked to above explains in detail how these rules work.

Local governing boards generally have the power to decide whether vacancies must be included in quorum calculations for their committees and appointed boards. (Sometimes those bodies are permitted to adopt their own procedural rules. In those situations, the committee or board itself may specify whether a quorum is a majority of total seats or of current members.) It often happens, though, that local rules don’t address the effect of vacancies on the quorum for committees or appointed boards. As far as I can tell, the current edition of RONR doesn’t deal with this issue either. (Please alert me if I’m wrong, and I’ll credit you in an updated version of this post.)

In my view, the best practice is not to count vacant seats in such quorum determinations. One reason is that this approach aligns with other parliamentary authorities. See *Mason’s*, § 501.1 (2010 ed.) (“[W]hen there is a vacancy, unless a special provision is applicable, a quorum will consist of the majority of the members remaining qualified.”) Additionally, excluding vacancies reduces the likelihood that the lack of a quorum will prevent a committee or appointed board from performing its assigned functions. Suppose, for example, that a seven-member advisory board has three vacant seats, and a majority of members is required for a quorum. If the vacancies are counted for quorum purposes, then all four of the remaining members must be present for the board to transact official business (four is a majority of seven). On the other hand, if the vacancies are excluded, the board may meet even if one of its four remaining members is absent (three is a majority of four).

### **Quorum and Members Who Don’t Vote**

Under the quorum statutes for local governing boards, members who attend a council or commissioners meeting are counted present in the quorum determination, regardless of whether they deliberate or vote. This is consistent with general parliamentary practice, but don’t just take my word for it.

- RONR, (11<sup>th</sup> ed.), p. 345, ll. 5-7: “The quorum refers to the number of members present, not to the number actually voting on a particular question.”
- *Mason’s*, § 503.1 (2010 ed.): “A quorum is determined by the number of members present, not by the number voting. The fact of a quorum is not dependent upon the number who participate in the proceedings and vote. If the number necessary to make a quorum is present, it makes no difference how many or how few actually participate in the discussion.”
- *American Institute of Parliamentarians Standard Code of Parliamentary Procedure*, p. 123 (2012): “A quorum always refers to the number of members *present*, not to the number *voting*. If a quorum is present, a vote is valid even though fewer members than the number specified as present participated in the vote.” (Emphases in original.)

I’m not aware of an instance in which state law requires a committee or appointed board to deem a member absent if the member is excused or not allowed to take part in a matter before the body. Accordingly, it seems to me that, unless a local procedural rule expressly provides to the contrary, all members of a committee or appointed board who attend a meeting should be counted toward the number of members needed for a quorum, even those who don’t deliberate or vote.

Returning to the hypothetical described at the beginning of this blog post, we can safely conclude that a quorum of the public safety committee is present, unless Bomont’s council has adopted rules for the committee at odds with the general parliamentary principles summarized herein. The resignation of one member has reduced the number of committee



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members to five, so Mr. Moore only needs two other members to attend the meeting in order to have a quorum (three is a majority of five). Although one of the members present wishes to be excused from any consideration of the proposed ordinance, this fact is irrelevant as far as the quorum is concerned. Mr. Moore may press on with his effort to end dance mobs downtown.

If your governing board has adopted unusual quorum rules for its committees or appointed boards, I'd like to know about it. Please share in the comments section below.

## Links

- [en.wikipedia.org/wiki/Footloose\\_\(1984\\_film\)](https://en.wikipedia.org/wiki/Footloose_(1984_film))
- [canons.sog.unc.edu/?p=3448](https://canons.sog.unc.edu/?p=3448)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130a-35](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=130a-35)
- [canons.sog.unc.edu/?p=7347](https://canons.sog.unc.edu/?p=7347)
- [www.sog.unc.edu/publications/books/suggested-rules-procedure-small-local-government-boards](http://www.sog.unc.edu/publications/books/suggested-rules-procedure-small-local-government-boards)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-74](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=160a-74)
- [www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-43](http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=153a-43)