



Texas Association of School Boards

Legal Services

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Serving Texas Schools Since 1949

Open Meetings Act

Voting

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1. What is a “quorum” and why is it required for voting?

Under the Texas Open Meetings Act (OMA), a quorum means a majority of a governmental body, unless defined differently by applicable law or rule or the charter of the governmental body. Tex. Gov’t Code § 551.001(6); *see also* Tex. Gov’t Code § 311.013(b) (a quorum of a public body is a majority of the number of members fixed by statute). A quorum is a majority of the *authorized* membership, even if there are vacancies, and not the *actual* membership at any given time. Tex. Att’y Gen. Op. No. JM-1127 (1989). A quorum of a school board, therefore, is a majority of the total number of board members (e.g., three members of a five-member board, four members of a seven-member board, or five members of a nine-member board).

Generally, the authority vested in a governmental body may be exercised only at a meeting of a quorum of its members; therefore, votes of less than the quorum may not bind the governing body to any decision. *Webster v. Tex. & Pac. Motor Transp. Co.*, 166 S.W.2d 75 (Tex. 1942). For school boards, a member of the board may not, individually, act on behalf of the board, unless authorized by the board. The board may act only by majority vote of the members present at a meeting held in compliance with the OMA, at which a quorum of the board is present and voting. Tex. Educ. Code § 11.051(a-1).

2. How does a vacancy on our board affect the quorum?

Vacancies on the board do not reduce the number required for a quorum in order for the board to take valid action. Tex. Att’y Gen Op. No. MW-0562 (1982) (quorum of a board remains at all times a majority of the authorized membership, although there are vacancies on a board).

3. How many votes does a board need to take action?

Generally, the common law provides that, for a school board to take action, a motion must be passed by a majority of votes cast at a meeting at which a quorum is present, excluding abstentions. *Parker v. Dallas Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 051-R2-1098 (Dec. 14, 1998); *Reyes v. Progreso Indep. Sch. Dist.*, Tex. Comm’r of Educ.

Decision No. 121-R1-698 (July 27, 1998); *Benton v. Wilmer-Hutchins Indep. Sch. Dist.*, Tex. Comm’r of Educ. Decision No. 149-R1a-883 (Sept. 26, 1984). In other words, an effective vote is a majority of the votes actually cast, not a majority of the quorum present.

Although counting votes may seem straightforward, some situations may make it difficult to know when a motion has passed:

- **Majority vote:** Once a quorum is present, a majority vote (more than half) of those present and voting will result in action that is binding on the entire board, unless the action is prohibited by law. *Kermit Indep. Sch. Dist. No. 5 v. State ex rel. Wink Indep. Sch. Dist. No. 1*, 208 S.W.2d 717 (Tex. Civ. App.—El Paso 1948, no writ).
- **Abstentions:** Abstentions do not count as votes. An effective vote is a majority of the votes actually cast, not a majority of the quorum present. Tex. Att’y Gen. Op. No. O-994 (1939). For example, on a seven-member board with two members abstaining, three votes are needed for the action to prevail.
- **Ties:** Tie votes mean the motion fails, as a tie vote is not a majority vote of those members present and voting. The result is that the status quo remains.

In addition, certain provisions of the Texas Education Code require that a majority of the board, rather than a majority of those present and voting, approve an action:

- **Financial statement:** Section 11.064(a) states that a majority of the board must adopt a resolution requiring each member of the board to file the financial statement required of state officers under Texas Government Code subchapter B, chapter 572.
- **Mineral sales:** Section 11.153(b) requires a sale of minerals to be by a resolution adopted by a majority of the board.
- **Borrowing to pay maintenance expenses:** Section 45.108(c) states that a majority of the board must vote to adopt a resolution to borrow money to pay current maintenance expenses.
- **Depository bank:** Section 45.204 allows a board to select a depository bank, even when one or more of the district’s trustees have a conflict of interest, but only if the bank is selected by a majority vote of the board or a majority vote of a quorum when only a quorum is present (after excluding any board members with a conflict of interest).
- **Tax increase:** Texas Property Tax Code section 25.06 requires at least 60 percent of the members of a school board to approve a motion to increase a school district’s tax rate above the sum of the effective maintenance and operations rate and the current debt rate.

4. Does Texas Education Code section 11.051(a) change the common law voting procedure?

No. In 2007, the Texas legislature amended Texas Education Code chapter 11 to clarify superintendent and board member roles and relationships by listing the primary responsibilities of both. One section of the amended law, which addresses the power of individual trustees, could have been read to change the common law rule for voting followed by school district trustees. The provision states that a school board may act only by “majority vote of the members present” at an open meeting. Tex. Educ. Code § 11.051(a-1).

In July 2008, the commissioner of education requested that the attorney general interpret Section 11.051(a-1) and determine whether the common law rule had been altered. The attorney general agreed that, on its face, Section 11.051(a-1) could be construed to alter how the majority vote of a school board was determined. Because it was not clear from the text of Section 11.051(a-1) that the legislature intended to abrogate the common law with respect to the majority vote requirement, however, the attorney general examined the legislative history of Section 11.051(a-1) to be sure the legislature intended such a change.

After reviewing the legislative history, the attorney general concluded that the purpose, circumstances of enactment, and the legislative history indicated that the legislature intended the change to better define the role of a school board trustee and to segregate the board’s role and duties from those of the superintendent, particularly with respect to governance and management duties. There was no indication, however, that the legislature intended to alter the common law majority vote requirement for school board trustees. Consequently, the attorney general concluded that Section 11.051(a-1) did not alter the common law standard for determining the number of votes necessary for a school board to act in its official capacity.

5. How do abstentions affect the majority vote?

Abstentions do not count as votes. Tex. Att’y Gen. Op. No. O-0994 (1939).

6. When would a trustee abstain from voting?

A trustee is required to abstain from voting and deliberation if he or she has a legal conflict of interest that prevents the trustee’s participation. A trustee may abstain from voting to avoid an appearance of impropriety, even if not legally required to do so.

- **Nepotism:** When an employee related to a board member is employed pursuant to the “continuous employment” exception, the board member may not participate in any deliberation or voting on the appointment, reappointment, confirmation of the appointment or reappointment, employment, reemployment, change in status,

compensation, or dismissal of the employee if that action applies only to the individual and is not taken regarding a bona fide class or category of employees. Tex. Gov't Code § 573.062(b). See TASB Policy DBE(LEGAL).

- **Substantial interest:** A trustee with a substantial interest in a business or real property must abstain from further participation in the official decision-making process, if the board's action on the matter will have or foreseeably will have a special economic effect on the business entity or real property that is distinguishable from the effect on the public. Tex. Loc. Gov't Code § 171.004(a). However, abstention is not required if a majority of board members are required to and do file affidavits of substantial interest in a particular business entity. Tex. Loc. Gov't Code § 171.004(c). See TASB Policy BBFA(LEGAL).
- **Budgets:** The school board must take a separate vote on any budget item specifically dedicated to a contract with a business entity in which a board member has a substantial interest. The member may, however, vote on the budget as a whole if the member has filed the necessary affidavit, abstained from voting on the specific item, and the specific budget item has been otherwise resolved. Tex. Loc. Gov't Code § 171.005. See TASB Policy BBFA(LEGAL).
- **Appointment of successor:** A board member who is resigning may not participate in the vote to appoint her successor. Tex. Att'y Gen. Op. No. O-6259 (1944).
- **Board member code of ethics:** A trustee is not obligated to deliberate or cast a vote merely because state law does not prohibit participation. At times, a trustee may feel too involved with a certain situation or with a particular vendor to make an unbiased decision and may abstain. The trustee may also choose to abstain from participation to avoid the appearance of impropriety, even if none exists. Through local policy, most school districts have adopted a local board member code of ethics that can assist trustees in evaluating their circumstances and determining when to abstain. See TASB Policy BBF(LOCAL).
- **Duty to another entity:** Different laws may govern the actions of an individual serving in dual or multiple capacities. Aside from disclosures or abstentions explicitly required by law, a school board trustee should also consider other legal considerations of voting or participating in school board matters that may conflict with its duties and obligations to other entities before participating or voting in school board matters. For example, a school board trustee may simultaneously serve as a director of a non-profit organization and president of a private corporation; however, if a school board trustee ignores a potential conflict between the school district and other entities on which he or she serves, the trustee could be sued for breach of the trustee's fiduciary duty. Tex. Att'y Gen. Op. No. DM-0256 (1993) (citing *Blocker v. State*, 718 S.W.2d 409 (Tex. App.—Houston [1st Dist.] 1986, writ ref'd n.r.e.)).

7. How is voting conducted?

All voting must take place in an open meeting. Public voting is consistent with one of the purposes of the OMA: to permit the public to know how their elected officials have voted on public issues. Neither secret ballots nor straw polls—or voting of any kind—may be taken in closed meetings. Tex. Gov't Code § 551.102; Tex. Att'y Gen. Op. No. H-1163 (1978).

8. If a trustee cannot attend an important meeting, may the trustee vote by proxy?

No. The OMA contemplates that board members will be present at meetings in order to participate. The attorney general explains that the purpose of requiring the board to act as a body at a meeting is “to afford each member of the body an opportunity to be present and to impart to his associates the benefit of his experience, counsel, and judgment, and to bring to bear upon them the weight of his argument on the matter to be decided by the board, in order that the decision . . . may be the composite judgment of the body as a whole.” Tex. Att'y Gen. LO-94-028 at 2 (1994) (quoting *Webster v. Texas & Pac. Motor Transp. Co.*, 166 S.W.2d 75, 77 (Tex. 1942)). Board members, therefore, must be present at board meetings to vote.

9. May a trustee vote by videoconference or teleconference?

Absent an emergency, the only means by which an absent board member can participate (and vote) in a board meeting is via videoconference. The videoconference call must comply with all requirements of Texas Government Code section 551.127, which contains very high technical standards specified by the Texas Department of Information Resources, and any board member on a videoconference call who is lost or disconnected from either audio or video communication during the call will be considered absent (and unable to vote). Tex. Gov't Code § 551.127(i), (a-3); 1 Tex. Admin. Code. ch. 209.

Voting by telephone conference call may only occur if the meeting is held in compliance with requirements of Texas Government Code section 551.125 (i.e., an emergency or urgent public necessity exists as defined by the OMA, and convening in a quorum at one location is difficult or impossible). If a physical quorum is in physical attendance at a single location, the OMA does not permit absent members to join the meeting via telephone conference call. Tex. Gov't Code § 551.125; Tex. Att'y Gen. Op. No. JC-0352 (2001).

School districts should consult with technology professionals and their school attorneys before conducting board meetings via videoconference or telephone conference call.

10. Should the board vote on procedural issues, like whether to recognize a speaker or whether to go into closed meetings?

When it is not necessary to clarify the board’s intent and have a procedural decision recorded as an action in the minutes, the president may ask for unanimous consent to take the action. For example, “If there is no objection, we will not discuss item eight tonight because of the late hour.” After requesting any objection by a board member to be voiced, the president can proceed with a statement like, “Hearing no objections, we will now move on to item nine.”

If, in the example given, a board member did object, the president could simply call for a vote to determine the board’s wishes. If there is no objection, the result is the same as if the board voted to postpone the item until a future meeting.

11. May the board president vote, or does the president vote only in a tie?

The board president has the same right to vote as any other trustee. The board president’s vote does not weigh more than the vote of any other trustee.

12. May the superintendent cast a vote to break a tie vote?

No. The superintendent is not a member of the school board and does not have the authority to cast a vote.

13. What TASB policies apply to voting?

Policies BBFA(LEGAL) and BEC(LEGAL) discuss voting as it applies to all members. Check out TASB Policy BE(LEGAL), (LOCAL) and BDAA(LEGAL), (LOCAL) for board president’s voting rights.

14. Where can I get more information about the OMA?

The [office of the attorney general](#) is the primary source of information related to the OMA. Supplemental resources from TASB related to school board meetings are available on the [TASB Store](#) or [TASB School Law eSource](#). School district trustees and administrators may contact TASB Legal Services at 800.580.5345.

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