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Voting makes a difference

This factsheet is designed to address the most frequently asked questions about voting during school board meetings. The information is of a general nature. Readers should seek the advice of legal counsel with specific legal problems or questions.

It is important for board of education members to become familiar with the legal rules relating to voting. Under Ohio law, a simple majority in some contexts is not sufficient to pass a motion before the board. Under other circumstances, a minority of board members can approve a resolution. There have been instances in which a board of education has been surprised to learn that a board action which the board thought had passed actually had not.

This brochure is designed to eliminate any such element of surprise by providing board members, school administrators and others with "the legal basics" regarding board voting.

However, the factsheet is designed as a summary and guide only, and you are advised to consult legal counsel if complex issues arise.

How many board members are necessary to constitute a quorum for purposes of conducting board business?

A majority of all members of the board constitutes a quorum for such purposes (Ohio Revised Code Section (RC) 3313.18).

How many votes are required to pass a motion or a resolution?

The general rule is that a majority of those present and voting is sufficient to pass a motion or resolution (Anderson's Ohio School Law Guide, Text 3.11). Exceptions to this general rule have, however, been created by statute.

For instance, RC 3313.18 specifies the following motions which require an affirmative vote of a majority of all board members for passage:

- to adopt a resolution authorizing the purchase or sale of real or personal property;
- to employ a superintendent, teacher or other employee;
- to elect or appoint an officer;
- to pay any debt or claim; and
- to adopt any textbook.

There are other statutory exceptions to the general rule that a majority of the quorum is sufficient to pass a motion. Page 3 of this factsheet lists matters which, by statute, require more than a simple majority vote for passage.

What are the legal effects of an abstention upon a given motion or resolution?

An abstention is considered as a "not voting." Thus, it constitutes neither a vote in favor nor a vote against the motion. However, board members should be aware that in some situations an abstention may make the difference in whether a resolution receives the required number of votes to pass. For this reason, board members need to be aware of the number of votes necessary to pass a given resolution and, correspondingly, the effect of abstaining in such context.

When is abstention appropriate?

In general, board members are encouraged to take a stand and cast a vote on matters of business which come before the board. However, in some instances,

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abstention may be required by law. For instance, a board member may not vote or participate in the making of a contract of a public school teacher or instructor where the board member is related to the individual under consideration as father, brother, mother, or sister (RC 3319.21).

Furthermore, the Ohio Ethics Commission has taken the position that RC 2921.42, which imposes criminal liability in certain conflict of interest situations involving public officials, prohibits a board member from authorizing, voting or otherwise using the authority or influence of his or her office to secure approval of an individual contract with his or her spouse, although the board member may vote upon a master contract between the school district and the teachers' union in most situations (Ohio Ethics Opinion No. 82-003). Also, see RC 3313.33, which prohibits a board member from having, directly or indirectly, a pecuniary interest in any contract of the board, or being employed in any manner by the board for compensation.

Three exceptions are recognized by the statute.

The first is if a board member is employed by the state or a political subdivision that is contracting with the board, the board member does not participate in discussions or votes on the contract and the board member files an affidavit with the school district's treasurer stating the board member's exact employment status with the state or political subdivision.

The second exception recognized by law is when a board member who is a shareholder of a corporation, but not an officer or director of it, owns not in excess of 5% of the stock of the corporation. If a board member wishes to use this exception, the board member must file an affidavit with the treasurer stating his or her exact status and connection with the corporation prior to a contract being entered into (RC 3313.33).

The third exception is that of an officer, director, stockholder, employee or owner of any interest in a public depository that receives deposits from a school district is deemed by law not to have an unlawful interest in such deposits. Any board member who is in doubt regarding the legal propriety of casting a vote in any given situation is advised to consult legal counsel.

Are there any restrictions upon the time and place of a board vote?

Yes. The Sunshine Law provides that a resolution, rule or formal action of any kind is invalid unless adopted in an open meeting. Therefore, board members are advised not to vote on any matter in executive session. Furthermore, under the same law, a resolution, rule or formal action adopted in open session is invalid if it results from deliberations in executive session, unless the matter is one that the

board of education is entitled by law to discuss in executive session (RC 121.22(H)).

Is it possible for a board member to cast a vote without physically being present at the board meeting?

No. The Sunshine Law now provides that a member must be present in person at the meeting in order to be considered present to vote on any issue and to be considered for purposes of determining a quorum. Members may participate in deliberations by electronic means, but may not vote and are not considered present for a quorum (RC 121.22(C)).

May a board president make or second a motion?

Yes. The Ohio attorney general has taken the position that the president, as a member of the board, is permitted to initiate or second a motion (1960 Informal Opinion of the Ohio Attorney General, No. 244; 1937 Opinion of the Ohio Attorney General, No. 466).

How should board action on a particular motion be conducted and recorded?

By statute, the board treasurer is required to publicly call the roll of board members and enter on the records the names of those voting "Aye" and the names of those voting "No" upon motions involving the following matters:

- the purchase or sale of real or personal property;
- the employment of a superintendent, teacher or other employee;
- the election or appointment of an officer;
- the payment of any debt or claim; and
- the adoption of any textbook.

A board member may demand that the treasurer call the roll and record the names of those voting in favor or against a motion with regard to any other motion or resolution before the board (RC 3313.18).

While Ohio law does not require a treasurer to publicly call the roll and obtain votes individually in all instances, it is a suggested practice. It is recommended that the treasurer enters on the minutes of each board meeting the individual members voting in favor or against a given motion, as well as those abstaining. The treasurer should also record the name of the member who initiates the motion and the name of the member who seconds it (1937 Opinion of the Ohio Attorney General, No. 466).

Who declares the vote as having passed or failed?

It is the duty of the board president to declare that a motion has passed or failed. Accordingly, the board president should familiarize him- or herself with the legal requirements relating to passage of motions and resolutions (*Robert's Rules of Order*, Section 44; RC 3313.18).

Are there ways to avoid voting on every item?

Yes. A board of education may avoid the strict procedural requirements in a large number of cases through the adoption of an annual appropriation resolution. If the annual appropriation resolution is adopted by a majority vote of the full membership, the board of education may thereafter adopt a general resolution dispensing with the adoption of separate resolutions for particular matters if the appropriation resolution has provided for these matters.

Under RC 3313.18, the board of education may, by such general resolution, dispense with the adoption of resolutions authorizing the following:

- the purchase or sale of property, except real estate;
- the employment, appointment or confirmation of

officers and employees, except as otherwise provided for by law;

- the payment of debts or claims; and
- the salaries of superintendents, teachers and other employees.

Furthermore, through the adoption of an annual appropriation resolution, a board of education may delegate certain employment decisions to its administrative officers. If the board of education has adopted an annual appropriation resolution, it may, by general resolution, authorize the superintendent or other officer to appoint employees as are provided for in such annual appropriation resolution (RC 3313.47). (Appointment of certificated/licensed employees always requires board action.)

<i>Item</i>	<i>number of votes needed for:</i>		<i>statutory reference (Ohio Revised Code)</i>
	<i>5-member board</i>	<i>7-member board</i>	
Declaration of necessity to issue bonds under 133.18	3	4	Majority of full membership (133.01 (U))
Declaration by remaining members that reasons for a member's absence for 90 days are insufficient to continue membership	3	4	2/3 of remaining board members (3313.11)
Filling of a vacant board seat	3	4	Majority of remaining board members (3313.11)
Purchase or sale of real estate or personal property	3	4	Majority of full membership (3313.18)
Employment of any employee	3	4	Majority of full membership (3313.18)
Election or appointment of officer	3	4	Majority of full membership (3313.18)
Payment of any debt or claim	3	4	Majority of full membership (3313.18)
Adoption of textbook	3	4	Majority of full membership (3313.18)
Annual appropriation resolution	3	4	Majority of full membership (3313.18)
General authorization to dispense with separate resolutions authorizing purchase or sale of personal property, appointment of employees, etc.	3	4	Majority of full membership (3313.18)
Appointment of treasurer pro tempore	3	4	Majority of full membership (3313.23)

<i>Item</i>	<i>number of votes needed for:</i>		
	<i>5-member board</i>	<i>7-member board</i>	<i>statutory reference (Ohio Revised Code)</i>
Determination that treasurer's incapacity is removed	3	4	Majority of full membership (3313.23)
Removal of treasurer pro tempore at any time for cause	4	5	2/3 of full membership (3313.23)
Action to affirm, reverse, vacate or modify an order of student expulsion or to reinstate	3	4	Majority of full membership (3313.66)
Appointment of superintendent pro tempore	3	4	Majority of full membership (3319.011)
Removal of superintendent pro tempore at any time for cause	4	5	2/3 of full membership (3319.011)
Re-employment of teacher in city, exempted village, joint vocational and local districts where superintendent refuses to nominate	4	6	3/4 of full membership (3319.11)
Rejection of superintendent's recommendation that a teacher eligible for continuing status be re-employed*	4	6	3/4 of full membership (3319.11)
Selection of textbooks	3	4	Majority of full membership (3329.08)
Change, alteration, revision or substitution of textbook or part thereof during four-year period after original selection and adoption	4	6	4/5 of full membership (3329.08)
Rejection of findings and recommendations of fact-finding panel by board or employee organization under statutory impasse resolution procedure	3	5	3/5 of full membership (4117.14)
Transfer funds in certain cases	4	5	2/3 of full membership (5705.14)
Resolution declaring the necessity for certain transfer of funds	3	4	Majority of full membership (5705.16)
Resolution of necessity to proceed for levying a tax outside 10-mill limitation (not emergency)	4	5	2/3 of full membership (5705.21)
Transfer of territory from one local school district to another local school district (ESC governing boards only)	3	4	Majority of full membership (3311.22, 3311.231)
Transfer of local school district from one ESC to territory of another adjacent ESC	3	4	Majority of full membership (3311.059)

** This voting requirement, taken out of context, can be deceptive. Boards should review the entire procedure under RC 3319.11 before taking any action.*

The information in this factsheet is intended as general information. It should not be relied upon as legal advice. If legal advice is required, the services of an attorney should be obtained.