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Parliamentary procedure — separating the myths from reality

by Adam C. Miller
deputy director of legal services

Board members have the same attitude toward parliamentary procedure as many people do about public speaking: fear, uncertainty and misconception.

Parliamentary procedure is merely a tool for the board to use to conduct its business. Nothing more, nothing less.

This article addresses common myths in parliamentary procedure and explains basic mechanics, aspects of frequent motions and hints to avoid pitfalls.

It is important to understand this subject to improve the board's public perception and the competence of each member.

The history

People ask "who is Robert and when does this guy ever bring us order?" Actually, *Robert's Rules of Order* dates back to 19th Century America. Major Henry M. Robert, (1837-1923) an Army officer, made it his goal to collect the various procedural traditions for managing a meeting of a deliberative body, with an eye toward an improved practice manual.

Borrowing largely from the English parliamentary tradition, Thomas Jefferson's *Manual and Congressional Practice*, Major Robert started a draft of the first *Rules* in 1874 while stuck in Milwaukee during an especially tough winter.

The *Rules* have been revised many

times since originally published in 1876.

As the Ohio legal system developed, the legislature authorized boards of education, and other political entities, to adopt suitable procedural rules. While Ohio law does not require it, for purposes of clarity and efficiency, most public entities (including boards of education) formally adopt *Robert's Rules of Order* to assist them in conducting their meetings. Adoption can be formal or informal. A resolution to adopt

Robert's Rules helps to make clear for board members, and those in the public who understand the *Rules*, the types of permissible motions, order of precedence, and the votes required to pass a particular motion.

The law

To help run the meeting, the board of education has the authority to choose a rules scheme that works best. Because the choice is totally within the board's discretion, Ohio courts have held that the board's failure to follow those same procedures does not invalidate the underlying board action. The theory of "substantial compliance" applies and a recent court decision underscores this point.

In State ex rel. *Savarese v. Buckeye Local School Dist. Bd. of Educ.*, 74 Ohio St.3d 543, (1996), the Ohio Supreme Court adopted the view of a lower appeals court, holding that a technical failure to follow the rules in a hiring resolution does not invalidate a teacher's coaching contract nonrenewal.



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This case is particularly striking considering the court's pains in other cases to require proper procedure on all teaching contract nonrenewals. It emphasizes the legal difference between substantive procedural rights — to a fair impartial hearing, etc., and the board's legal right to choose procedures to conduct the meeting itself.

What if the board adopts its own rules, but chooses to change them? That's fine because boards may adopt *Robert's Rules* and local rules which overrule *Robert* or address local procedures.

Some boards formally adopt the agenda for each meeting while others adopt a rule that a resolution must have three readings at separate meetings to be considered. There is nothing wrong with these rules. However, the board can just as easily change these rules or temporarily suspend them, by a two-thirds vote.

Motions

The most important concept of the motion is that all motions require a second. A motion must have a second in order to have a proper vote. After the motion has a second, the chair should state the motion before the board. Discussion is proper at this juncture.

After an appropriate time for discussion, the chair asks for a vote. The treasurer then calls the roll on whether the motion should pass and reports the vote to the chair to announce the result: motion carries or motion fails.

Frequently a question is asked, if a member of the board who wants to run for board president or vice president can put his or her own in for nomination. Members may nominate themselves.

Nominations for president and vice-president do not require a second.

One myth concerns speaking on one's own motion. Any member may address his or her own motion. A board president has the same right to offer a motion as a regular member. The president may also speak as a board member without relinquishing the chair.

The amendment process can be confusing. The motion to amend is a separate motion altogether. It requires a second and a vote on the motion to amend. Then, if the motion to amend passes, the chair should restate the motion, as amended, for discussion and subsequent vote. However, if the motion to amend fails, the original motion stands, and discussion on the original motion occurs followed by a vote.

The motion to table is made to postpone consideration of the motion at hand. Tabling has the highest precedence, requiring immediate consideration. However, it only postpones consideration of a measure for a short time. In fact, *Robert's Rules* holds that tabling a motion has the effect of preventing consideration for only the remainder of the meeting when tabling occurs.

Take the case of a motion to give all "administrators" the same raise as teachers under the new union contract. After its second, someone offers a motion to table. If approved, the tabling will postpone consideration of the motion for a raise until the end of the next meeting, unless the board takes the motion *from* the table in the meantime. The topic can be taken from the table any time until the end of the next meeting, but not afterward.

If the goal is to keep something out of consideration for good, the motion to postpone indefinitely is the only mechanism available. Remember, in practice, there is no permanent disposal of an item under parliamentary rules. A motion can always be revived by a majority vote of the whole board (unless the by-laws require a different majority).

In this fashion, most motions have companion opposites:

- to table or to take from the table,
- to refer to committee or to accept the committee's report,
- to close debate or to reconsider.

Each of these motions has a different order of preference and, in some instances, a number of votes required for passage.

OSBA has materials available which summarize the details of the various motions. It is very difficult to memorize each motion and all of its branches, but taking a copy of OSBA reference materials to each board meeting will help. This allows members to focus on the bigger issues.

A motion to reconsider under *Robert's Rules* is proper only when made in the same meeting. For example, after the board has voted to hire classified and teaching personnel, a member may move to reconsider part or all of an earlier action. The motion to reconsider must be made by someone who voted on the prevailing side. For this reason, the rescission motion is more common because it is open to members on each side of the particular question. However, a motion to rescind cannot be made at the same meeting, but only at subsequent meetings.

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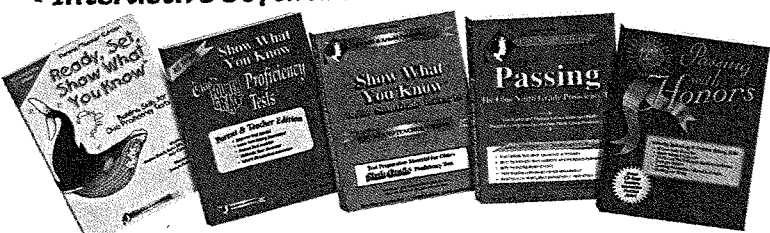
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after the fact, a vote to rescind is the necessary vehicle.

This motion, also known as repeal, requires a two-thirds vote, unless members had prior notice of the member's motion.

Proceed only with great caution: rescission is a measure fraught with many problems. Consult legal counsel when considering rescinding a board action — some legal rights may have vested since the motion's passage, preventing effective rescission.

An example of this is when a board, perhaps newly constituted, considers taking action to rescind the renewal of an administrator's contract. This action is legally troublesome because of the legal rights involved. Rescission is best used to correct mistakes, mutually agreed upon mistakes in contract language and the like. It is not a tool to subvert past decisions.

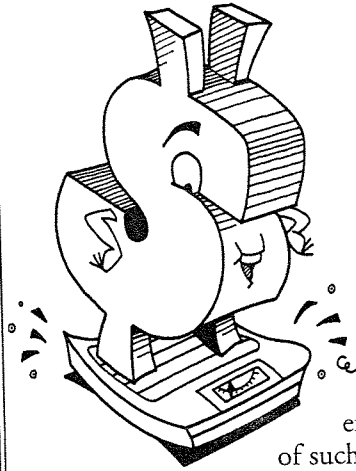
Another motion requiring a two-thirds vote is the motion to close debate or call the question. This is a motion of high precedence, requiring immediate action. Only a tabling motion has higher precedence. In practice it works

as follows: after a discussion on a new location for the elementary school has gone on for 45 minutes, a board member moves to limit debate.

Another member moves to table the motion. The vote to table is 3-2. The motion to close debate is tabled and the discussion on the school's location must go on.

At this point it is evident that there are many, many possible combinations of parliamentary questions that can arise. Keep your handbook ready, rely on your treasurer to take accurate records of the meeting and slow down. Taking time to act in accordance with the rules gives everyone time to give consideration to the important matters at hand. Everyone makes parliamentary mistakes, now you know it isn't fatal. □

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