

VOTING AT SCHOOL BOARD MEETINGS AND RELATED BOARDSMANSHIP ISSUES

Preliminary Note

“Voting at School Board Meetings” contains discussions and reference citations for companion questions. In addition, discussions of abstentions, both mandatory and voluntary, cover the impacts on voting caused by:

- ➔ the conflict of interest laws
- ➔ regulations of the Fair Political Practices Commission
- ➔ conduct of board members

****ALL REFERENCES ARE TO THE EDUCATION CODE UNLESS OTHERWISE INDICATED****

THE GENERAL STATUTORY SETTING

1. *Majority Vote of Board Membership*

Section 35164 provides: “The governing board shall act by majority vote of all the membership constituting the governing board.” In the absence of any other specific statute, this section governs the number of votes required for board action. No secret balloting is permitted. **Government Code section 54953**

For seven-member boards only, a special “vacancy” rule applies under section 35165. If there are one or two (but not more) vacancies on such a board, those vacant positions shall not be counted to determine the members necessary to constitute a majority. For example, if a seven-member board has two vacancies, three votes (a majority of the five seated members) would be sufficient to take action. This exception does not apply to a five-member board with one or two vacancies, and three affirmative votes would still be required for action for such a board. Section 35165 also provides, with respect to seven-member boards with one or two vacancies, that the vacancies shall be excluded from determining board membership when unanimous action of all or a specific number of members is required. This exception for seven-member boards also implies that wherever unanimous action by all board members is required, a five-member board with a vacancy is prevented from taking action since there is no authority to exclude the vacant position on a five-member board in determining the total membership of the board.

2. Two-Thirds Vote of All Members

(Four of five or five of seven, unless section 35165 applies.)

- A. Resolution declaring intention to sell or lease real property. **Section 17466**
- B. Lease for no more than three months of district property having a residence thereon. **Section 17481**
- C. Resolution declaring intention to exchange real property. **Section 17537**
- D. Resolution declaring intention to dedicate or convey right-of-way or utility easement. **Section 17559**
- E. Resolution authorizing execution of deed dedicating right-of-way or easement. **Section 17559**
- F. Vote on unappropriated fund balances in the budget. **Section 42125**
- G. Resolution for budget transfers. **Section 42600**

3. Unanimous Vote

- A. Resolution determining that real property of the district may be leased for a value not exceeding \$50 per month. **Section 17471**
- B. Resolution prescribing the terms of a gas lease. **Section 17511**
- C. Resolution authorizing sale or lease of property to other public agencies. **Section 17545**
- D. Resolution by unanimous vote of those members present that surplus property does not exceed in value \$2,500 or is of insufficient value to be sold. **Section 17546**
- E. resolution by a unanimous vote to approve a contract for labor and materials or supplies without seeking bids in the event of an emergency, as specified in Public Contract Code section 20113/20654 [note different rules apply for districts adopting the Uniform Construction Public Cost Accounting Procedures (see Public Contract Code sections 12035, 22050).

SPECIFIC APPLICATIONS OF THE LAW

4. *Abstentions Defined*

A board member “abstains” by so announcing at the time a matter is first taken up. The term also includes a refusal to vote. In both cases, the board member should — and sometimes must — state for the record the basis for abstention or refusal to vote. The sole way to avoid announcing an abstention is to simply not be physically present when the matter is first taken up, and to remain absent until the next agenda matter is called.

The authorities have said that it is the duty of a member of a public body to vote affirmatively or negatively on matters being acted upon at meetings where the member is present (absent a conflict of interest). (*Dry Creek Valley Association, Inc. v. Board of Supervisors* [1977] 67 Cal.App.3d 839; 61 Ops.Cal.Atty.Gen. 243 [1978]). However, there is no precedent for compelling a trustee to cast a vote.¹

Some abstentions may well be compelled by specific statutes. Three frequently encountered examples are:

Close Relatives: Section 35107 requires that a board member abstain whenever the board takes up a personnel matter uniquely affecting a close relative of that board member. See further discussion below.

Selecting a New Board Member After a Deferred Resignation: Section 35178 prohibits a board member who has resigned with a deferred effective date from participating in the decision on whether or who to appoint as his/her replacement.

A “Remote” Interest Under the Various Conflict of Interest Laws or Regulations: Both the conflict of interest laws (see Government Code sections 1090, et seq.) and the Fair Political Practices Act (Government Code sections 87100, et seq.) require abstention in certain situations.

The principal set of circumstances requiring abstention appears under the “remote interests” listed in Government Code section 1091. The Fair Political Practices Commission, by regulation and general advice to public officials, helps with interpretations of both the conflict of interest laws and the Fair Political Practices Act.

¹The Fair Political Practices Commission has informally opined that an abstention due to an actual conflict of interest cannot be counted under a *Dry Creek* theory. See FPPC regulations at Title 2, Division 6, of the California Code of Regulations.

5. *When Do Abstentions Figure into Vote Computations?*

An abstention (or a refusal to vote, however characterized) is not without effect. The *Dry Creek* case, cited above, confirms that an abstention counts as a vote in agreement with the greater number of affirmative or negative votes cast.

On a five-member board with all members present, a vote of two “yes” and two “no” with one “abstain” means that the motion fails for lack of a majority of three votes. However, if one member is absent, two vote “yes,” one votes “no,” and one abstains, the matter passes by three votes: the two “yes” votes, plus the abstention. If all five members are present, three vote “yes” and two abstain, the motion passes by unanimous approval.

The same rule applies on a three-member board: one “yes,” one “no,” and one “abstain” means the motion fails because there is no greater number of affirmative or negative votes for the abstention to “side” with. However, if one votes “yes,” one abstains, and one is absent, the abstention joins the affirmative vote, and the measure passes.

On a seven-member board, four abstentions and three “yes” votes produces unanimous passage. Three “yes” and three “no” votes plus an “abstain” results in the failure of the motion. Three “yes” votes, one abstention, two “no” votes, and one absence results in passage of the measure by a four to two margin.

As noted above, Education Code section 35107 also requires a board member to abstain from voting on personnel matters which “uniquely affect a relative of the member.” The term “relative” is limited to adults related to the third degree by blood or marriage. The board member may still vote on collective bargaining agreements.

6. *Role of the Board President*

The president of the school board is, first and foremost, a member of the board. In his or her capacity as an elected or appointed trustee, each member is empowered by the electorate to vote on all matters which come before the board for action. Indeed, the power to vote at an official meeting is the essential authority conferred upon a school trustee.

For this reason, no board-adopted rule or parliamentary custom or practice can deprive the president of the right to vote. It is our advice that the board president may vote on any and all items on which the board acts (unless required to abstain) and, further, that the president may — without relinquishing the chair — propose any motion and discuss any matter which is properly before the board.

7. Public Participation

Finally, members of the public are not members of the board. They do not have the right to rise to a "point of order," "point of information," or "point of personal privilege" during the course of a board meeting. The presiding officer (subject to being overruled by the majority) is free to recognize members of the public, or not, as he or she chooses. (See, however, the discussion of public participation at board meetings in our accompanying memorandum concerning the Brown Act.)

8. Selected Boardmanship Issues

Someone once observed that the best test of a good board member is whether he/she can progress beyond being a one-issue candidate. Another sage suggested that a good board member can accept being outvoted and go on to the next agenda item. Unfortunately, we see far too many examples of divisiveness even in experienced boards. The incidents can be distilled into two categories: (a) leaking confidential information, and (b) disruptive behavior. Each can lead to mischief — or worse.

Violation of Closed Session Confidentiality: Public policy is thwarted when a board member unilaterally reveals to anyone the contents or proceedings in a closed session. The Government Code's Brown Act requirements and possible penalties are discussed under the heading "Confidentiality of Closed Sessions" in the Brown Act summary in this pamphlet.

Disruptive Behavior: When a member disrupts the orderly conduct of business, the entire board can be made to look foolish and adrift. The chairperson should take care to follow established policy and regulate the manner and decorum of presentation by board members.

Remedies Available to the Board: Available remedies are few, but vary widely in approach and effect.

Good Approaches: The boardmanship approach should focus on healing any breach in a collegial manner rather than attempting to ostracize the offending member.

Difficult Alternatives: We discourage boards from threatening or implementing any of the following remedies.

- ➡ Asking for civil judicial intervention, such as an injunction.
- ➡ Attempting to call for a censure vote at a board meeting.

- Calling for a motion to exclude a member from a closed session solely because he/she is engaging in a course of revealing closed session information.
- Referring a breach of confidentiality matter to the District Attorney or grand jury.

CONCLUSION

School board members are guardians and keepers of the flame, the public trust. The term “trustee” implies fidelity and honor. A trustee must demonstrate undivided loyalty to the office, duties of a fiduciary as to the district’s funds and operations, and full accountability to the public for their actions and voting record.

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