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OPINION	:	No. 79-819
	:	
of	:	November 14, 1979
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SUBJECT: CHARTER CITY COUNCIL PROCEEDINGS—In a charter city that has adopted Roberts’ Rules of Order to govern city council proceedings pursuant to charter authority, a motion carries where two council members vote affirmatively and the two other members abstain, with the fifth seat vacant.

The Honorable Curtis R. Tucker, Assemblyman, 50th District, has requested an opinion on the following question:

In a charter city that has adopted Roberts’ Rules of Order to govern city council proceedings pursuant to charter authority, does a motion carry where two council members vote affirmatively and the other two members abstain, with the fifth seat vacant?

CONCLUSION

In a charter city that has adopted Roberts’ Rules of Order to govern city council proceedings pursuant to charter authority, a motion carries where two council members vote affirmatively and the two other members abstain, with the fifth seat vacant.

ANALYSIS

We are informed that at a recent meeting of the city council of a chartered city, two members voted affirmatively on a motion and two members abstained, with the fifth seat vacant. The city's charter provides that the council may establish rules and regulations for the conduct of its proceedings, and the municipal code requires that the meetings be conducted according to Roberts' Rules of Order unless the members of the council agree otherwise. We are asked whether the motion carried, assuming that the abstentions were not caused by conflicts of interest and Roberts' Rules of Order were in effect. We conclude that the motion carried.

To reach our conclusion we must consider several distinct issues. In particular, we must examine the often quoted principle that in the absence of controlling law, a "majority" of a "quorum" is empowered to act for a legislative body. (See *FTC v. Flotill Products* (1967) 389 U.S. 179, 183; *People v. Harrington* (1883) 63 Cal. 257, 259–260; *Ursino v. Superior Court* (1974) 39 Cal. App. 3d 611, 620; *Martin v. Ballinger* (1938) 25 Cal. App. 2d 435, 437; 61 Ops. Cal. Atty. Gen. 243, 252 (1978); 60 Ops. Cal. Atty. Gen. 76, 78 (1977); 58 Ops. Cal. Atty. Gen. 706, 706 (1975); 55 Ops. Cal. Atty. Gen. 26,27 (1975).)

A. Municipal Affairs of a Charter City

The California Constitution provides for "home rule" by chartered cities as follows:

"It shall be competent in any city charter to provide that the city governed thereunder may make and enforce all ordinances and regulations in respect to municipal affairs, subject only to restrictions and limitations provided in their several charters and in respect to other matters they shall be subject to general laws. City charters adopted pursuant to this Constitution shall supersede any existing charter, and with respect to municipal affairs shall supersede all laws inconsistent therewith." (Cal. Const. art. XI § 5, subd. (a).)

The establishment of rules regarding the conduct of city council business would come within the "home rule" provision as a "municipal affair." (*In re Pfabler* (1906) 150 Cal. 71, 82; *Morton v. Broderick* (1897) 118 Cal. 474, 487; see also *Fisher v. Board of Police Commissioners* (1965) 236 Cal. App. 2d 298, 300–301.) Thus, while general law cities are governed, for example, by Government Code section 36810¹ concerning the

¹ Government Code section 36810 provides:

"A majority of the council constitutes a quorum for transaction of business. Less than a majority may adjourn from time to time, and compel attendance of absent

transaction of business by a city council (see *Kennedy v. City of Ukiah* (1977) 69 Cal. App. 3d 545, 551), chartered cities may adopt their own charter provisions governing the procedures to be followed in city council proceedings.

Here, we are requested to take note that the city in question has a charter allowing the council to establish its own rules and regulations for the conduct of its business, and the council has done so by adopting Roberts' Rules of Order to govern the transaction of its business. Accordingly, we will look to Roberts' Rules of Order in determining the issues presented.

B. Quorum Requirement

Without the presence of a "quorum," a deliberative body cannot transact business other than to (1) fix the time to which to adjourn, (2) adjourn, (3) recess, or (4) take measures to obtain a quorum. (Roberts' Rules of Order (Rev. 1970) § 37, p. 295; *cf.* 61 Ops. Cal. Atty. Gen. 243, 252 (1978).)

A quorum is the minimum number of members who must be present at a meeting for business to be legally transacted. (Roberts', *supra*, § 3, p. 16; *cf.* Mason's legislative Manual (1975) § 503, p. 340; Sturgis Standard Code of Parliamentary Procedure (2d ed. 1966) p. 113.) A quorum refers to the number of members present, not to the number of members actually voting on a particular question; however, the quorum members must be *entitled to vote*.² (Roberts', *supra*, § 39, p. 293; *cf.* Mason's, *supra*, § 502, pp. 338–339; Sturgis, *supra*, p. 114.)

A quorum consists of a majority (more than half) of the existing membership of the body. (Roberts', *supra*, §§ 3, 39, pp. 17, 294; *cf.* Mason's, *supra*, § 500, p. 336; Sturgis, *supra*, p. 113.) The existing membership may be less than the fixed membership of the body if one or more seats are vacant. (Roberts', *supra*, § 43, p. 342; *cf.* Mason's, *supra*, § 501, p. 337; *Nesbirt v. Bolz* (1939) 13 Cal. 2d 677, 680; 49 Ops. Cal. Atty. Gen. 30, 32–33 (1967).)

members in the manner and under the penalties prescribed by ordinance.”

² A member who is not entitled to vote because of a conflict of interest, for example, is not counted for purposes of establishing a quorum on a particular question. (Roberts', *supra*, § 39, p. 293; *cf.* Mason's, *supra*, § 502, pp. 338–339; Sturgis, *supra*, p. 114.) Special rules are applicable where a quorum cannot be formed due to conflicts of interest. (See *Dry Creek Valley Assn. Inc. v. Board of Supervisors* (1977) 67 Cal. App. 3d 839, 846 fn. 1; 61 Ops. Cal. Atty. Gen. 243, 253–255 (1978).) We do not have those circumstances here, and we will limit our discussion accordingly.

In the question presented, the existing membership of the city council numbered four, a majority of which would be three. Since four council members were present and entitled to vote, regardless of the number of votes actually cast, a quorum was present for the transaction of business.

C. Majority Vote Requirement

Having determined that a vote could be taken with regard to the motion presented, we next consider whether the motion carried where two members voted affirmatively and two abstained.

The basic parliamentary rule is that where a quorum is present, the direct approval of more than half of those members actually *voting* for or against the measure becomes the act or choice of the body. (Roberts', *supra* §§ 1, 43, pp. 3, 339; *cf.* Mason's, *supra*, §§ 503, 510, 516, pp. 342, 348–350, 363; Sturgis, *supra*, p. 133.)

Only those votes that are for or against the measure are counted; blank votes and members who abstain are not counted in determining the outcome. (Roberts', *supra*, § 43, pp. 339, 343; *cf.* Mason's, *supra*, §§ 410, 515, 517, pp. 348–349, 360, 364.) Those members who wish to remain neutral thus acquiesce in the action taken by the majority of those who vote affirmatively or negatively.³ (Roberts', *supra*, § 43, p. 342; *cf.* Mason's, *supra*, § 516, p. 363; Sturgis, *supra*, p. 134; *Dry Creek Valley Assn. Inc. v. Board of Supervisors*, *supra*, 67 Cal. App. 3d 839. 843.)

In the question presented, there were two affirmative votes and two abstentions with regard to the motion. Following Roberts' Rules of Order, we conclude that the motion was adopted.

³ In case of a tie among those who vote, for or against the measure, the motion is not adopted and the situation remains unchanged. (Roberts', *supra*, § 43, p. 343; *cf.* Mason's, *supra*, § 513, pp. 355–356.)