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SPRINGFIELD

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FILE NO. S-1123

TOWNSHIPS:
Requirements for Action
By Board of Town Auditors

Mr. Frank A. Kirk
Director, Department
of Local Government Affairs
303 E. Monroe Street
Springfield, Illinois 62607

Dear Mr. Kirk:

This responds to your letter in which you ask the following questions:

1. What constitutes a quorum for meetings of the Board of Auditors of a Township?

2. If a quorum of three is required for the transaction of Township business by the Board of Town Auditors, can affirmative action be taken by the Board when approved by a majority of the Board members present?

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3. If affirmative action of the Board can only be taken by a majority of the Board (the full Board consisting of five members), is it nevertheless possible to take affirmative action in those cases where the Board, by vacancy, has been reduced to four members or less and, if so, what vote is required for such affirmative action?"

In response to your first question, I note that in the absence of any pertinent statutory provisions, common law precedents continue to be valid in Illinois. One such precedent provides that a majority of the duly elected members of the governing body of a municipal corporation constitutes a quorum of that body, absent a specific statutory or constitutional provision to the contrary. (Louk v. Woods, 15 Ill. 256, 262-263; 56 Am Jur. 2d, Mun. Corps., section 163.) According to section 1 of article XIII of "AN ACT to revise the law in relation to township organization", (Ill. Rev. Stat. 1975, ch. 139, par. 117), a board of town auditors normally consists of 5 members. It is therefore my opinion that under the common law rule a quorum of the board consists of a majority, or 3 members.

In regard to your second question, it must first be noted that there is no provision in article XIII of "AN

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ACT to revise the law in relation to township organization", (Ill. Rev. Stat. 1975, ch. 139, par. 117 et seq.) which specifies the number of board members needed in order for the board to transact business. Because of the absence of statutory direction, the Illinois Appellate Court, 5th District, when asked recently to deal with a question similar to the one you raise, resorted once again to a traditional common law rule. In the case of People ex rel. Compton v. Penn, 33 Ill. App. 3d 372, the court considered the validity of the action of a board of town auditors in filling a vacancy on the board. Two of the four remaining members of the board had acted to appoint one J.C. Penn to fill the vacancy. The court, at page 373, described the issue for consideration as whether appointment by the board, to be valid, required action by a majority of the remaining board, "or only action by a majority of those who participate in the undertaking". The court then stated at page 396 that:

" * * *

* * * In our opinion, the best approach to the instant problem has been stated in State ex rel.

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Saxon v. Kienzle (1965), 4 Ohio St. 2d, 47, 48, 212 N.E. 2d 604, 605:

'In the absence of a statute to the contrary, any action by a board requires that a quorum participate therein, and that a majority of the quorum concur. Merchant v. North, 10 Ohio St. 251. See State, ex rel. Cline v. Trustees of Wilkesville Township, 20 Ohio St. 288' (emphasis added.)

* * *

Applying this rule to the question before it, the court at page 377 concluded that:

" * * * It therefore would have been lawful for a majority, or a common law quorum, of the remaining members of the Board of Auditors to have acted to fill the vacancy on the Board by appointment. There being four remaining members of the Board, three were required for a quorum. If a quorum had been present, a majority of those present could have acted to make the appointment. However, since only two of the remaining four members were present, the action taken in appointing J.C. Penn was invalid." (emphasis added.)

Although the question you raise is somewhat broader than that dealt with by the court in the Penn case, the reasoning of that decision is clearly applicable to it. Furthermore, the common law principle relied upon by the court in the Penn case is almost universally accepted. See, e.g. F.T.C. v. Flotill Products, Inc., 389 U.S. 179; Mo. Pac.

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R. Co. v. Kansas, 248 U.S. 276, 56 Am Jur. 2d Municipal Corporations, section 168.

It is therefore my opinion that a quorum for the purpose of a board of town auditors is a majority of the elected members of the board in office. It is further my opinion that, when a quorum is present, valid action may be taken by the affirmative vote of a majority of that quorum.

In view of my answer to your second question, it is unnecessary to consider your third question.

Very truly yours,

A T T O R N E Y G E N E R A L