

ATTORNEY GENERAL

May 17, 1978

TO SECRETARIES OF ALL PROFESSIONAL BOARDS

FORMAL OPINION NO. 6—1978

A question has arisen as to the number of affirmative votes needed to authorize action to be taken by the several professional boards. It is our opinion that a majority of the existing members of the board is necessary to take action and conduct the business of the professional board.*

This inquiry requires an analysis of N.J.S.A. 45:1-2.2(d) which provides as follows:

d. A majority of the voting members of such boards or commissions shall constitute a quorum thereof *and no action of any such board or commission shall be taken except upon the affirmative vote of a majority of the members of the entire board or commission.*

The italicized language was added by recent amendment. Laws of 1977, c. 285.

There is no available legislative history to assist in the interpretation of this statutory section. It is therefore necessary to discern the probable legislative intent from the language of the statute together with the import of its recent amendment. Clearly, prior to its amendment, the statute reflected the common law rule of "quorum." A majority of all the members of a governing body constituted a quorum and in the event of vacancy, a quorum consisted of a majority of the remaining members. *Ross v. Miller*, 115 N.J.L. 61, 63 (S.Ct. 1935). It was likewise the rule at common law that a majority of those assembled in a quorum could take affirmative action and conduct the business of the governmental body. *Ross v. Miller, supra*.

In the interpretation of a statute, its language should not be regarded to be merely repetitive nor superfluous. *Foy v. Dayko*, 82 N.J. Super. 8,

* Professional board means The New Jersey State Board of Certified Public Accountants, the New Jersey State Board of Architects, the State Board of Barber Examiners, the Board of Beauty Culture Control, the Board of Examiners of Electrical Contractors, the New Jersey State Board of Dentistry, the State Board of Mortuary Science of New Jersey, the State Board of Professional Engineers and Land Surveyors, the State Board of Marriage Counselor Examiners, the State Board of Medical Examiners, the New Jersey Board of Nursing, the New Jersey State Board of Optometrists, the State Board of Examiners of Ophthalmic Dispensers and Ophthalmic Technicians, the Board of Pharmacy, the State Board of Professional Planners, the State Board of Psychological Examiners, the State Board of Examiners of Master Plumbers, the State Board of Shorthand Reporting, the State Board of Veterinary Medical Examiners, and the X-ray Technician Board of Examiners in the Division of Consumer Affairs; and the New Jersey Real Estate Commission in the Department of Insurance.

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13 (App. Div. 1964). It cannot be assumed that the legislature by its amendment simply restated the common law rule, since the amendment specifies a need for an affirmative vote of a majority of the members of the entire board or commission. There are no cases in New Jersey which interpret the meaning of the phrase "the entire board or commission." Analogous cases construing comparable language such as "a majority of all the members" or "a majority of the whole number of councilmen" have held that language to mean a majority of the authorized membership provided by law. *Prezlak v. Padrone*, 67 N.J. Super. 95, 103 (Law Div. 1961). *Dombal v. Garfield*, 129 N.J.L. 555 (S.Ct. 1943); *Ross v. Miller*, *supra* at 65.

The holdings of these cases which require a majority of "authorized membership" are inapposite to the present situation. A review of the amendatory language clearly demonstrates a legislative purpose to modify the common law rule solely with respect to the number of persons needed to take affirmative action by a professional board. There is no indication of a legislative intent to alter or modify in any manner the number of persons needed to constitute a duly convened quorum; as heretofore a majority of the "existing" membership of the board. A statute should be construed in a manner to give sense and meaning to all of its parts. *Gabin v. Skyline Cabana Club*, 54 N.J. 550, 555 (1969). Also, where a statute derogates from the common law, the statute must be strictly construed. *Boileau v. DeCecco*, 125 N.J. Super. 263, 268 (App. Div. 1973). It may therefore be reasonably assumed to be the legislative intent to continue to require a majority of the existing membership of a professional board to constitute a quorum, but that no action be taken except upon the affirmative vote of a majority of the existing members of the board. A majority of a quorum would not be sufficient unless the same is equivalent to or more than a majority of the existing appointed membership of the professional board.

For these reasons, you are advised that pursuant to N.J.S.A. 45:1-2.2(d) a majority of the membership of a professional board shall constitute a quorum, but that no affirmative action be taken in the conduct of the business of a board unless upon the affirmative vote of the majority of the present appointed members of the board or commission.

Very truly yours,
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