

ASK THE LEAGUE, MAY 2015

Quorum FAQs

What is a “quorum” of the selectboard?

A quorum of the selectboard is a majority of all of the members, regardless of the number of vacancies. To determine the size of a quorum you must count the number of seats on the board, not the number of bodies sitting in those seats. A quorum of a three-person selectboard is two, *regardless* of the number of vacancies; a quorum of a five-person selectboard is three, regardless of the number of vacancies. This rule applies to all other municipal “public bodies” such as boards, committees, and commissions, *with the exception* of the board of civil authority and the board of abatement (addressed below).

Why is quorum important?

A quorum is necessary to hold a meeting. Under Vermont’s Open Meeting Law, a “meeting” is defined as “a gathering of a quorum of the members of a public body for the purpose of discussing the business of the public body or for the purpose of taking action.” 1 V.S.A. § 310(2). A quorum is also necessary to take action. Where legal authority is given to a “public body” (a board, committee, or commission), that authority may only be exercised by the quorum of that public body. This rule comes from 1 V.S.A. § 172 which states “[w]hen joint authority is given to three or more, the concurrence of a majority of such number shall be sufficient and shall be required in its exercise.” This language means that a majority of the total members of a selectboard must agree before the selectboard may take an action or make a decision.

The above rule applies to all municipal boards, committees, and commissions with the exception of the board of civil authority and the board of abatement which are given different standards for taking action. (See below.)

What about abstentions and recusals?

Abstentions do not count toward quorum; the joint authority statute requires there be affirmative votes from a majority of the total members. The Vermont Supreme Court has stated that the “concurrence” of the majority that is required by 1 V.S.A. § 172 is “more than silent acquiescence; it requires consent expressed in an overt way.” *In Re Appeal of Reynolds*, 170 Vt. 352 (2000).

What is different about the Board of Civil Authority?

The Board of Civil Authority (BCA) is the group of municipal officers who are responsible for tax assessment appeals and local election issues. The BCA comprises the selectboard members, justices of the peace, and the town clerk. In certain instances, additional members may be

appointed to the BCA to ensure balance between major political parties when dealing with election issues.

When the BCA is dealing with tax assessment appeals, state law gives authority to act based on the vote of the majority of members present at a meeting. Twenty-four V.S.A. § 801 states, “The act of a majority of the board present at the meeting shall be treated as the act of the board ...” In practice this means that if there are five members of a nine-person BCA present at a grievance hearing, that group may take action or make a decision even if only three of those present at the hearing are in agreement. In that example, the three members constitute “a majority of the board present” at the meeting. On the other hand, if at least three of the five who are present do not agree, the BCA cannot take any action, and the property assessment remains at the amount set by the listers.

There is yet another standard imposed when the BCA is dealing with election issues. In those instances, “those members of the board of civil authority present and voting shall constitute a quorum, provided that official action may not be taken without the concurrence of at least three members of the board.” 17 V.S.A. § 2103(5). This different standard of quorum likely exists so that election issues can be resolved immediately on election days without response from the entire BCA.

What is quorum of the Board of Abatement?

The quorum of the board of abatement (BOA) – which is made up of all of the members of board of civil authority (selectboard, justices of the peace, and town clerk) plus the listers and the town treasurer – is generally the majority of all of those members. However, a quorum may be less than a majority of the total members if (and only if) the town treasurer, a majority of the listers, and a majority of the selectboard members are present at a meeting. 24 V.S.A § 1533. In that instance, a quorum consists of the town treasurer, a majority of the listers, and a majority of the selectboard members, regardless of how many of the total members that adds up to.

Regardless of how the quorum is established, the BOA, like the BCA, is given authority to make decisions with the vote of less than a majority of the total membership. Twenty-four V.S.A § 1533 states that “[t]he act of a majority of a quorum at a meeting shall be treated as the act of the board [of abatement].” This means that as long as a quorum is present at the meeting, it will only take the vote of a majority of that quorum to take action or make a decision.

What if our town has eliminated the position of elected lister? Does the hired assessor have a place on the BOA?

We think so. The statute that identifies the members of the board of abatement, 24 V.S.A. § 1533, has not been amended to address the situation of a town that has voted to eliminate the position of elected lister. Nevertheless, we think it is clear from the language of 17 V.S.A. § 2651c(b)(1) that a contracted assessor takes the place of the listers and therefore has a spot on the BOA. The statute states that a contracted assessor “shall have the same powers, discharge the same duties, proceed in the discharge thereof in the same manner, and be subject to the same liabilities as are prescribed for listers or the board of listers under the provisions of Title 32.” The contracted assessor holds only one seat on the BOA, regardless of whether the assessor is an individual or an assessing firm.

It is up to the selectboard to decide whether the assessor's contract includes serving on the board of abatement. Even if the contract calls for such work, the assessor (like elected listers) does not sit on the board of abatement during abatement hearings that require testimony or advocacy by the assessor (or lister). This is because the assessor (or lister) may not act as both witness *and* judge in an abatement hearing.

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