

Opinion No. 33-578

April 18, 1933

BY: E. K. NEUMANN, Attorney General

TO: Mrs. Lillian A. Bess, Secretary, Board of Education, Tucumcari, New Mexico.

{*37} Your questions contained in your letter of April 7, 1933 are as follows:

Q. In a board meeting at which only four members are present, does it require a majority of those voting to carry a measure, or does it require three favorable votes?

A. It is conceded to be true that a majority of a board can transact business, a quorum thereby being present. In absence of statute, a majority of a board constitute a quorum. Consequently, if a majority of those present and voting vote upon a particular measure, a quorum being present, though some not voting, such measure is adopted or rejected as the case may be and action can be validly taken thereon. To answer your specific question, I am of the opinion that three votes are not necessary to carry a measure unless all present vote upon the particular measure.

Q. In same case, does the presiding officer, a member of the group, vote to make a tie, when voting is by ballot, or does he vote only in case of a tie?

A. A presiding officer, a member of the group, is entitled to vote upon all questions before the board. In case vote is by ballot, the presiding officer must vote prior to time ballots are counted or commenced to be counted. In all other cases he may vote where the vote would change the result, that is, he may vote with the minority to make the vote a tie or less than a two-thirds or other like majority, thereby defeating the measure. He cannot, however, vote twice.

Q. In case of no law governing a procedure, does custom prevail? Is Roberts Rules of Order authority in this case?

A. In case of no law (statutory or constitutional) governing procedure, custom will not prevail, for the courts, in most cases, have laid down rules upon most all subjects, so that general laws control in given cases. Roberts Rules of Order usually control in these cases, for that work is a well worked out digest of laws relating to such subjects. This work may generally be safely followed.