

# Have We Met?

## The rules may change but quorums are here to stay



We govern by meeting. America is composed of representative democracies, Congress, state assemblies, boards of municipality authorities, school directors, supervisors, commissioners, and councils. While single executives (the President, mayors, governors, county executives, etc.) may be empowered to carry out the law, laws are created by groups elected to represent the disparate wishes of the voting public.

Some may criticize group decision making; “a camel is a horse designed by a committee.” But, as Winston Churchill famously observed: “Democracy is the worst form of government, except for all the others that have been tried.”

Public access to this decision-making process is an essential counterbalance to the power conferred on the representatives. Representative bodies must act by meeting and meetings must be open to public view.

Two recent Pennsylvania court decisions have clarified two elements of public meetings applicable to municipality authorities: when are you “present” and what happens if the lights go out.

### New rules for quorums

The quorum concept has a long history. The word is Middle English, a somewhat corrupt transliteration of the Latin for “of whom.” An act by a quorum of the representative body is then an act “of” the body. The number varies dependent on the size of the body.

In ancient Greece, according to Plutarch, a quorum of 6,000 was required for ostracism under the Athenian democracy.

Perhaps the most potent source of our American democracy began with the 1215 signing of Magna Carta, the Great Charter, between then King John of England and of his barons. For the first time in that realm the King became subject to the rule of written law. The basic rights enshrined there formed the basis for our own Constitution and Bill of Rights as well as those of many other countries today. To enforce the charter, it specifies that the barons will elect a committee of twenty-five. If the twenty-five disagree or some are unable to attend the meeting “whatever the majority of those present shall provide . . . is settled . . . as if the whole twenty-five had agreed to it.”

The first case, SEDA-COG Joint Rail

Auth. V. Carload Express decided in October of 2020, grapples with the quorum requirement for authority voting

The Carload Express case deals with a 16-member authority acting to approve an operating agreement with a contractor. At the meeting on the topic six members of the board recused themselves from acting on the matter, leaving 10 to vote. The vote was 7 to 3. The question: were the six recused members “present” at the meeting so that their votes needed to be counted? If so, a minimum of nine votes was needed to act.

Municipality Authorities Act says a majority makes a quorum

Section 5610(e) of the Municipality Authorities Act says that “a majority of the members shall constitute a quorum” and that “all action may be taken by a majority of the members present.”

Those arguing against the award of the contract argued that if the six members were counted in determining that a quorum of the board was present so that a meeting could be held, then those same six members votes or failure to vote must be taken into account in deciding whether the motion to award the contract carried.

The Commonwealth Court, later affirmed by the Pennsylvania Supreme Court, found that to be “present” for purposes of voting implies that the member actually votes. Since the six recused members cast no votes at all, they were treated as though they were absent from the meeting. Both courts relied on the common law voting standard: once a quorum is achieved, a simple majority of votes cast is all that is necessary to carry a motion. The Magna Carta standard.

Before leaving this topic, we must note that this result can be modified by the statute governing the body or by the body’s own bylaws.

#### Sunshine Act changes may stick around

The other case arose during the Coronavirus pandemic, but its holding will survive that episode. Governments labored to function amidst “stay at home” orders that made the conduct of meetings with members of the public in physical attendance impossible. In April, 2020, the Pennsylvania General Assembly enacted a temporary amendment to the Sunshine Act that governs the conduct of municipal meetings. It allows meetings to be conducted through the use of authorized telecommunication devices during the pandemic.

The Scranton School District held a meeting to consider furloughing over 200 employees. The District advertised that the meeting would be conducted virtually via the “Zoom” internet based video conferencing service



and that the public would also be able to view the meeting live on the District’s “YouTube” channel. Technical failures made the YouTube channel unavailable and members of the public who had not signed up to view or speak at the meeting were disconnected from the Zoom meeting platform. Despite these failures, the School Board continued the meeting and voted to furlough the employees.

Members of the public requested and were granted an injunction by the Lackawanna County Court of Common Pleas halting the furloughs. The District argued, unsuccessfully, that the problems had been remedied during the meeting because it had been able to provide virtual public access to the meeting through its Facebook page, albeit on a two hour delay. It also uploaded the video transcript of the meeting to its YouTube page the following day.

#### Transparency wins the day

The Court held that the Sunshine Act is intended to provide the public with the right to observe and participate in public meetings. These technical failures effectively denied the public these rights. It is important to note that, while access to the meeting via the Facebook page might have proved a

suitable substitute, the District had not advertised that vehicle as an option.

While this amendment to the Sunshine Act will expire with the pandemic’s end, the principles of public access through accurate and complete notice and the ability to observe and participate will not.

Many organizations are already making plans to adopt technologies to enlarge the ways in which meetings can be held. The IRS, for example, recently amended rules for certain public hearings to allow them to be held remotely.

No matter what the manner of holding a meeting, if it goes dark so the public can’t see or participate, it is no longer a meeting.

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