

Dave Askins <dave@bsquarebeacon.com>

Mon, Mar 14, 8:46 PM

to Mike, Jacqueline

Hi Mike,

I just wanted to check in with you on why it was sufficient to have only four PC members present in-person tonight?

My understanding of the general ODL on electronic meetings was this: "(g) At least fifty percent (50%) of the members of the governing body must be physically present at a meeting."

<http://iga.in.gov/legislative/laws/2021/ic/titles/005/#5-14-1.5-3.5>

I have found a special rule for RDCs that says 1/3 is OK

<http://iga.in.gov/legislative/laws/2021/ic/titles/036/#36-7-14.5-9.5>

Is there also a special rule for plan commissions?

Thanks for any help you can give me on this

--Dave

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Mike Rouker

Tue, Mar 15, 10:42 AM

to me, Jacqueline

Thanks, Dave. That's a good question and one we've spent some time considering.

IC 5-14-1.5-3.5 (b) and (c) indicate (1) that members of a governing body who are participating remotely shall be considered present for purposes of establishing a quorum and (2) also that in the event of a technological disruption affecting some members who are participating remotely, if the sum of the members participating in person and the members participating remotely without technological disruption satisfies the quorum requirement, the body may continue to meet and take final action. The only way these two provisions make sense is if the denominator used when calculating compliance with the 50% requirement is based on members attending any particular meeting.

Using participating members as the denominator is also consistent with general parliamentary practice, where, for example, the denominator used to compute whether the 50% requirement has been met for a particular measure to succeed is the number of members participating in the vote, not the total membership. You'd only use total membership as a denominator where there

is a clear and explicit statute or rule stating that an alternative denominator is to be used. Section 3.5 provides no such clear and explicit mandate. It sure would have been helpful to everyone if the legislature had crafted Section 3.5 more thoughtfully, but I've pretty much learned to stop hoping for that.

It was good to see you in person last night. It's been a long time since I've seen most people face to face. I hope all is well, and I hope this helps.

--

Michael Rouker
City Attorney
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Dave Askins <dave@bsquarebeacon.com>
Mar 15, 2022, 10:49 AM
to Luke, Mike, Jacqueline

Hi Mike,

Thanks for this response.

First, I think the plain wording of statute is clear and there's no getting around the 50 percent requirement.

Question: What do you make of the clear guidance that Luke Britt has given on exactly that issue:

"The lynchpin to electronic participation by local governing body members is the physical presence of at least 50% of sitting board members, i.e. total membership of the board at the time of the meeting. Ind. Code §5-14-1.5-3.5(g). If less than 50% cannot attend in-person, the meeting must be canceled or postponed. This is an important fail-safe to ensure transparency."

Thanks!

--Dave

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Mike Rouker
Mar 15, 2022, 6:34 PM
to me, Jacqueline

I reached out to Luke Britt in advance of yesterday's meeting to discuss the question with him, and he got back to me with a response today. He indicated that the 50% calculation should be performed using the total number of seated members. For the avoidance of any doubt, we'll be following the guidance we received from the PAC today for future hybrid meetings.

I feel compelled to add that from a practical perspective, a hybrid meeting with 4 members participating in-person and 2 members remote is indistinguishable from a hybrid meeting where 5 members are physically present and 3 are remote--regardless of the total overall membership of the Board. In any case, because this involves a technical rather than a substantive matter, we won't be placing any of last night's items back on the Plan Commission's agenda for reconsideration.

Again, it was nice to see you last night. I liked the hat.

--

Michael Rouker
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