

From: Mike Rouker <roukerm@bloomington.in.gov>

Sent: Monday, March 14, 2022 10:35 AM

To: Britt, Luke <LBritt@opac.in.gov>

Subject: Open Door Law - Hybrid Meetings and 50% In-Person Calculation

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Luke:

My name is Michael Rouker, and I'm the City Attorney for the City of Bloomington. As the City's boards and commissions return to in-person and hybrid meetings, one question has come up a number of times related to some language in Indiana Code 5-14-1.5-3.5.

IC 5-14-1.5-3.5 indicates (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.

Further down, the statute states that "[a]t least fifty percent (50%) of the members of the governing body must be physically present at a meeting."

The somewhat ambiguous 50% language has created a bit of confusion. When we are doing the math to determine compliance with the 50% physically-present requirement, we are trying to sort out which denominator we should use. We believe the statute could be directing us to use any of the following as the denominator for the 50% in-person computation: (1) the number of members of the governing body who are participating in any particular meeting of the board; (2) the total number of members of the board who are presently appointed and seated on the board; or (3) the total number of seats on the board, including vacant seats.

Because of the quorum language in the statute, we think that the first interpretation is the most reasonable--that the proper denominator to use for the 50% calculation is the number of members participating in any particular meeting. This interpretation is also consistent with similar circumstances we encounter with our boards and commissions. For example, absent an explicit rule to the contrary, parliamentary procedure dictates that a measure succeeds if a majority *of those voting* consent to the measure (i.e. if the affirmative votes outnumber the negative votes). So on a nine-member board, if five members participate in a vote, a measure requiring a majority vote succeeds with a 3-2 vote, absent an explicit rule requiring a different denominator for the majority computation. This, too, suggests that the proper denominator for the 50% in-person participation calculation is the number of members participating, rather than some total number of members (whether that means the number seated or the number who could possibly be seated).

I have not seen any specific guidance on the proper denominator in your advisory opinions or from any court. Are you aware of any formal guidance on this question?

I appreciate any thoughts you may have on the question. If you would like to discuss, feel free to reach out to me on my mobile phone ((630) 235-1833) or by email. Thank you for your time and consideration.

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Michael Rouker
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On Tue, Mar 15, 2022 at 1:55 PM Britt, Luke <LBritt@opac.in.gov> wrote:

Hi Mike,

I reviewed the statute again and also through the lens of your analysis. I read what Dave Askins wrote this morning as well. I think "50% of the members of the governing body" implies 50% of the sitting membership irrespective of attendance or voting intention. So your scenario (2) below would be my answer.

Thanks,
Luke