

Honorable Harry D. Kaufman, President of Jail Board (continued)

rule is that where a law creating a Board or Commission is silent as to the number of votes necessary to carry an action, a majority of the quorum is sufficient for that purpose. See Roberts "Rules of Order," Revised Edition, Section 64, supra; McQuillin "Municipal Corporations," Section 13.30, supra; and cases there cited. Therefore, we are of the opinion that a majority of the quorum will suffice to carry the action.

You cited two examples which have arisen concerning the voting procedure of which you were in doubt, as follows:

a) When five of the seven members of the Board are present, you wondered whether a three to two vote constituted a valid enactment. Of course, this must be answered in the affirmative in that the five members present constitute a quorum, and the three to two vote represents a majority of the existing quorum.

b) If all seven members of the Board are present and three abstain on a particular question and the other four members vote three to one in favor of the said question, this would constitute a valid and proper vote. While it has been said that those present who refuse to vote for a purpose cannot be counted, the general rule is that those represented who remain silent, or fail or refuse to vote, are regarded as having voted affirmatively, i.e., for the proposition or to have voted with the majority. If a quorum is present, a refusal to vote will not defeat the action. (McQuillin "Municipal Corporations," 3rd Ed., Vol. 4, Sec. 13.32) Accordingly, such an action as set out above would constitute a valid passage.

If we can be of further assistance in this matter, please let us know.

Very truly yours,

/s/ **AMBROSE T. HARTMAN**  
Deputy City Solicitor

/s/ **PHILIP Z. ALTFELD**  
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