

**LETTER OPINION
2003-L-01**

January 2, 2003

Mr. James T. Odegard
Grand Forks County State's Attorney
PO Box 5607
Grand Forks, ND 58206-5607

Dear Mr. Odegard:

Thank you for your letter asking whether school board members must be physically present at a meeting of the board in order to constitute a quorum able to transact business, or whether part of the membership may participate in a board meeting by telephone.

Section 15.1-09-29, N.D.C.C., provides:

The board of a school district consists of the members elected according to the provisions of this chapter. A majority of the board constitutes a quorum. The agreement of a majority of those members present is necessary for the transaction of any business.

Words and phrases in a statute "must be construed according to the context and the rules of grammar and the approved usage of the language." N.D.C.C. § 1-02-03. When enacting statutes, it is presumed that a just and reasonable result and a result feasible of execution was intended by the Legislature. N.D.C.C. § 1-02-38(3) and (4).

At times, the Legislature has required that members of certain entities be "present in person." Examples are N.D.C.C. § 7-01-12(1) (requiring a two-thirds vote of shareholders of a building and loan association "present in person" or by proxy to vote on converting the association to a federal association), N.D.C.C. § 10-15-18 (defining a quorum for a cooperative association as 10% of the first 100 members plus 5% of additional members "present in person" or represented by delegates), and N.D.C.C. § 26.1-12-06 (defining a quorum as those members of a mutual insurance company "present in person" or represented by written proxies).

In the context of N.D.C.C. § 15.1-09-29, a school board consists of the members elected to the office. A majority of that board constitutes a quorum, and the majority of those “members present” is necessary for the transaction of business. Id. There is no language in the section indicating that use of the term “present” was intended to require actual physical presence by the quorum all in the same room.

In Clausing v. State, 955 P.2d 394, 399-400 (Wash. Ct. App. 1998), the court rejected an argument that language, similar to that in N.D.C.C. § 15-09-29, requiring an “affirmative vote of a simple majority of the members present at a meeting or hearing” required actual physical presence. While the rationale for rejecting the argument was based in part on the fact that there were other statutes related to the specific hearing being conducted that allowed the hearing to be held by telephone conference call, the court also said:

There are also sound public policy reasons to reject [the] position [that the language requires actual physical presence]. In this modern technological era, there are many expedient methods to conduct business. For example, video conferencing, internet conferencing, and telephone conference calls are all means to conduct transactions in an economical and efficient manner. These methods allow persons to be “present” to one another without the demands often required to achieve physical presence. In addition, when deciding a hearing location, the presiding officer must consider “accessibility, efficiency, and economy.” . . . This requirement is consistent with permitting the Board to choose to deliberate by telephone conference call.

Id. at 400. In Babac v. Pennsylvania Milk Marketing Board, 613 A.2d 551, 553 (Pa. 1992), the court said a quorum of members can consist of members not physically present at the meeting who participate by speaker telephone because the absent members are able to hear the comments of those present and communicate contemporaneously with each other. The reasoning of these courts for rejecting the argument that actual physical presence is necessary, while not binding, is persuasive. If a school board member is in a location different than where the meeting notice states the meeting will be held, but is able to participate in the meeting by listening to the comments of other board members and witnesses and communicating with all of those present at the meeting, then the purpose of the quorum requirement of N.D.C.C. § 15.1-09-29 is met.

In addition, defining a quorum and the need for a majority vote of those members present in N.D.C.C. §15.1-09-29 also distinguishes that voting requirement from those circumstances where a vote of the majority of the entire elected body is required to

support a decision. For example, after redistricting of a county's commissioner districts, a board of county commissioners may combine two or more of those districts "by resolution passed by a majority of the total membership of the board." N.D.C.C. § 11-07-03.1.

It therefore appears that language in N.D.C.C. § 15.1-09-29 concerning "members present" is intended to define the portion of the total membership of a board needed to transact business. It is not designed to require actual physical presence by all of those persons in the same room at a meeting.

It is therefore my opinion that a school board member may participate in a school board meeting by telephone or video equipment and be included in the number of board members needed to constitute a quorum and the number of votes needed to transact business.¹

Sincerely,

Wayne Stenehjem
Attorney General

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¹ School board meetings must be open meetings because of the provisions of N.D.C.C. § 44-04-19 and N.D. Const. art. XI, § 5. For the purposes of that section, a "meeting" means a formal or informal gathering, whether in person or through other means such as telephone or video conference, of a quorum of the members of the public body. N.D.C.C. § 44-04-17.1(8). If members of a governing body participate in the meeting by telephone, then a speaker phone or video monitor must be provided at the location specified in the notice of the meeting. N.D.C.C. § 44-04-19(4).