



**THE ATTORNEY GENERAL
OF TEXAS**

**JIM MATTOX
ATTORNEY GENERAL**

April 22, 1988

Mr. Vernon M. Arrell
Commissioner
Texas Rehabilitation Commission
118 E. Riverside Drive
Austin, Texas 78704-9982

LO-88-45

Dear Commissioner Arrell:

You ask whether the Texas Rehabilitation Commission may exercise its rule-making authority to define a quorum of its members. Article 14, V.T.C.S., provides:

The majority of any legally constituted board or commission, unless otherwise specially provided, shall constitute a quorum for the transaction of business.

Because article 14 applies to any state board or commission to which no specific provision applies, the Texas Rehabilitation Commission has no authority to define a quorum as anything other than a majority of the board members.

You also ask how many members constitute a quorum when there is a vacancy on the board. "The Board of the Texas Rehabilitation is composed of six members" Hum. Res. Code §111.013. The fact that a member resigns does not necessarily mean that there is a vacancy on the board. Tex. Const. art. XVI, §17 (holdover provision). There are circumstances, however, in which a true vacancy exists, Attorney General Opinion WW-1228 (1961), and in such circumstances a board or commission may continue to act as long as enough members remain to constitute a quorum. Walker v. Walter, 241 S.W. 524, 528 (Tex. Civ. App. - Fort Worth, no writ); See also Attorney General Opinions JM-423 (1986); MW-562 (1982); O-761 (1939). McQuillan On Municipal Corporations, §13.30 (Texas rule is same as common-law rule). Walker v. Walter makes clear that a quorum is to be defined in terms of the number of members provided for by law, not by the number actually

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sitting on a board or commission at any one time. 241 S.W. at 528. Also, the phrase "the majority of any legally constituted board or commission" in article 14, V.T.C.S. (emphasis added), supports our conclusion that a quorum is defined in terms of the total number of members provided for by law. Therefore, at least four members of the board of the Texas Rehabilitation Commission are necessary to constitute a quorum even if there is a vacancy on the board.

You also ask whether a "majority vote of the board" for purposes of section 111.0131 of the Human Resources Code means a majority of the total membership or a majority of those present. Section 111.0131(a)(5) of the Human Resources Code provides that a member of the board of the Texas Rehabilitation Commission may be removed if the member:

is absent from more than half of the regularly scheduled board meetings that the member is eligible to attend during each calendar year, except when the absence is excused by majority vote of the board.

In Attorney General Opinion 0-994 (1939) this office held that a majority of a quorum could take action. We think that rule is generally applicable. Of course, the legislature could provide that a majority of the total membership of a board or commission was necessary to take action on a matter, but we find nothing in section 111.0131 to indicate any such legislative intent. Therefore, we conclude that section 111.0131 requires a majority of those present -- who must, of course, constitute a quorum -- to vote to excuse a member's absence in order for the absence not to be counted in determining whether a board member may be removed because of absences.

Very truly yours,


Sarah Woelk
Assistant Attorney General
Opinion Committee

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