

General Duty to Vote and Number of Votes Required.

General Duty to Vote

Members of the County Board of Commissioners are elected officials generally responsible for managing the affairs of the County. Const 1963, art. 7, §§ 7, 8; MCL 46.1 *et seq.*; MCL 46.401 *et seq.*; OAG, 1995-1996, No. 6913, p 197 (August 19, 1996). As public officials, the official powers of the members of the Board of Commissioners are fiduciary. They are trusted with public functions for the good of the public, i.e., to protect, advance and promote its interests. OAG, 1979-1980, No 5626, p 543 (January 16, 1980).

In this context, a commissioner generally must vote on all matters coming before the Board of Commissioners. It is a breach of duty to abstain from voting in order to avoid an incompatibility of office, i.e., a conflict involving another public office or employment held by the Commissioner. *Macomb County Prosecutor v Murphy*, 464 Mich 149, 164; 627 N.W.2d 247 (2001). This most often arises when there is a contract between the public entities in which the Commissioner is employed or serving in an official capacity. Abstaining from official action in an attempt to avoid an incompatibility does not remedy a breach of duty. In fact, abstaining from voting in this situation results in a breach of duty. Therefore, vacating one of the offices is the only solution to the problem. See *Wayne Co Prosecutor v Kinney*, 184 Mich App 681, 684; 458 NW2d 674 (1990); *Contesti v Attorney General*, 164 Mich App 271, 280; 416 NW2d 410 (1987).

As a practical matter, requests to abstain from a vote do occur and the bylaws/board rules may address the method. Even though not legally required, we generally recommend a disclosure by a commissioner in a situation where abstention is sought, for the purpose of transparency. Abstention does not fix a legally prohibited conflict of interest (or incompatibility), and has the effect of a “no” vote for the purpose of calculating whether a question has passed or failed. Procedurally, every question not requiring a roll call should be put forward by the chair calling first for the affirmative votes and then for the negative votes. Even if a voice vote appears unanimously approved, the negative vote should still be called. Notably, the chair should not call for abstentions as these should only be addressed in the event of a specific request.

Majority of Quorum Present OR Majority of Members Elected and Serving

The general procedure to follow when determining the number of votes required is contained in MCL 46.3(2):

The county board of commissioners of a county shall act by the votes of a majority of the members present. However, the final passage or adoption of a measure or resolution or the allowance of a claim against the county shall be determined by a majority of the members elected and serving. The county board of commissioners may require in its bylaws that the votes of 2/3 of the members present or a majority of the members elected and serving, whichever is greater, are required on final passage or adoption of a nonagenda item. The voting requirements of this subsection do not apply if section 11 or any other provision of law imposes a higher voting requirement.

In practice for a County Board of Commissioners, only those matters involving questions of procedure (e.g., motion to divide a question) or which are administrative to the board (e.g., whether to adjourn, referral to a committee) will be determined by votes of a majority of the members present. This presumes a quorum was present at the outset to call the meeting to order. That said, the final passage or adoption of a measure or resolution (including motions) or the allowance of a claim against the county requires a majority of the members elected and serving to vote in the affirmative.