

Recording of affirmative vote when member absent

Number: INFORMAL

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Subject:

Recording of affirmative vote when member absent

Ms. Sonja K. Dickens
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Dear Ms. Dickens:

On behalf of the City of Miami Gardens, you ask whether a "yes" vote may be recorded for a member of the city council who has temporarily left the dais but is still physically present at the meeting when a vote is taken. For purposes of this response, it is assumed that the member of the council, while physically present in the room, is not attempting to cast a vote from the floor.

Your question arises in light of section 286.012, Florida Statutes, which provides:

"No member of any state, county, or municipal governmental board, commission, or agency who is present at any meeting of any such body at which an official decision, ruling, or other official act is to be taken or adopted may abstain from voting in regard to any such decision, ruling, or act; and a vote shall be recorded or counted for each such member present, except when, with respect to any such member, there is, or appears to be, a possible conflict of interest under the provisions of s. 112.311, s. 112.313, or s. 112.3143. In such cases, said member shall comply with the disclosure requirements of s. 112.3143."[1]

While section 286.012, Florida Statutes, prohibits a member of a governmental board who is present at any meeting from abstaining from voting, except under specified circumstances, the statute does not specify a penalty for such action. Moreover, it has been determined that the failure of a member to vote does not render a voted matter invalid if otherwise a quorum is present and the required number of affirmative votes have been cast by the voting members.[2] As the court in *Walberg v. Metropolitan Dade County* stated, to allow a member who voluntarily leaves a session of a board to render invalid any action taken in his or her absence "would grant to any member of a governmental body the means of frustrating official action by merely refusing to participate."[3]

There is nothing in the language of section 286.012, Florida Statutes, which would indicate that a member who temporarily absents himself or herself from the dais during a vote should be recorded as an affirmative vote. Likewise, nothing suggests that such action should be recorded as a negative vote. Rather, as stated above, the failure of a member of a board or commission to vote does not render a voted matter invalid if otherwise a quorum is present and the required number of affirmative votes have been cast by the voting members.

I trust that these informal comments may be of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tfl

[1] Section 112.3143(3)(a), Fla. Stat., states:

"No county, municipal, or other local public officer shall vote in an official capacity upon any measure which would inure to his or her special private gain or loss; which he or she knows would inure to the special private gain or loss of any principal by whom he or she is retained or to the parent organization or subsidiary of a corporate principal by which he or she is retained, other than an agency as defined in s. 112.312(2); or which he or she knows would inure to the special private gain or loss of a relative or business associate of the public officer. Such public officer shall, prior to the vote being taken, publicly state to the assembly the nature of the officer's interest in the matter from which he or she is abstaining from voting and, within 15 days after the vote occurs, disclose the nature of his or her interest as a public record in a memorandum filed with the person responsible for recording the minutes of the meeting, who shall incorporate the memorandum in the minutes."

[2] See *Walberg v. Metropolitan Dade County*, 296 So. 2d 509, 510 (Fla. 3rd DCA 1974), and Op. Att'y Gen. Fla. 74-289 (1974) (abstention by one or more members present at a meeting does not change the number of affirmative votes required for adoption of a matter before the commission).

[3] 296 So. 2d at 510.