



STATE OF ARKANSAS
THE ATTORNEY GENERAL
DUSTIN McDANIEL

Opinion No. 2014-031

June 2, 2014

The Honorable Charles Armstrong
State Representative
9900 West 36th Street
Little Rock, Arkansas 72204-6606

Dear Representative Armstrong:

You have requested my opinion on a question about the number of votes required to pass certain motions in a meeting of the school board. You give the following background for your request:

For years the LRSD Board of Directors has conducted its meetings in accordance with the procedural requirements found in *Robert's Rules of Order*. According to *Robert's Rules*, there are a number of procedural motions which require a greater number of votes than a simple majority. The LRSD Board is concerned that following *Robert's Rules of Order* may put the LRSD Board of Directors in conflict with A.C.A. § 6-13-619(c)(1)(C) if that statute is read to apply to procedural as well as substantive motions. Section 6-13-619(c)(1)(C) states that "[a] majority of a quorum voting affirmatively is required for the passage of any motion or resolution." With respect to procedural motions such as suspending the rules or calling a question, however, LRSD has followed the *Robert's Rules* requirement of a two-thirds vote.

With this background in mind, you ask the following question:

May LRSD lawfully follow *Robert's Rules of Order* with respect to such purely procedural motions and follow A.C.A. § 6-13-619(c)(1)(C) only with respect to substantive motions?

RESPONSE

It is my opinion (1) that section 6-13-619(c) applies to *all* motions and resolutions, regardless of whether they are procedural or substantive in nature; and (2) that section 6-13-619(c) only establishes the *minimum* (not the maximum) vote required for the passage of motions and resolutions. Thus, there is no reason to think that, by enacting section 6-13-619(c), the General Assembly intended to prohibit school boards from requiring a higher vote on certain procedural motions. Therefore, in my opinion, a school board is free to adopt the requirement in *Robert's Rules* that the passage of certain procedural motions requires a two-thirds vote.

DISCUSSION

Section 6-13-619(c)(1)(C) states that “[a] majority of a quorum voting affirmatively is required for the passage of any motion or resolution.” Before directly addressing your question, I need to clarify how I will use the term “procedural motion” and make two preliminary observations about section -619.

Your question asks about the vote requirement for “procedural motions” and alludes to the requirement in *Robert's Rules* governing such motions. In one sense, all motions are “procedural” in nature because a motion just is the procedural device by which a deliberative body considers a topic. Though you do not define what you mean by “procedural,” you offer two examples of such a motion: suspending the rules¹ or calling a question.² For purposes of this opinion, I will use the term “procedural” to refer to the 26 kinds of motions that *Robert's Rules* specifically designates as requiring a two-thirds vote.³ Examples of such motions include motions to take up a question out of its proper order, to suspend the rules, to limit or extend limits of debate.

¹ *Robert's Rules* defines a motion “to suspend the rules” as follows: “When an assembly wishes to do something during a meeting that it cannot do without violating one or more of its regular rules, it can adopt a motion to *Suspend the Rules* interfering with the proposed action—provided that the proposal is not in conflict with...local, state or national law....” RONR (11th ed.), p. 260.

² A motion to “call the question” is an informal way of making a motion for the “previous question,” by which one seeks to immediately close debate and “bring the assembly to an immediate vote on one more or pending questions.” RONR (11th ed.), § 16 at pp. 197, 202.

³ This list can be found in the “gray pages” at the back of *Robert's Rules* (11th ed.), specifically § VI, pp. 44–45.

With this definition of “procedural motion” in mind, we can move to the first preliminary observation regarding section -619(c). It seems clear that subsection -619(c)(1)(C) applies to *all* motions and resolutions, regardless of whether they are procedural or substantive in nature. This is evident because the provision states that a “majority of a quorum voting affirmatively is required for the passage of *any* motion....” (Emphasis added.) Because this subsection is clearly intended to apply to all motions, the statute will not support the view that the phrase “*any* motion” is only referring to substantive motions.

The second preliminary observation is two-fold. First, section 6-13-619(c) clearly establishes that a simple majority of the quorum is (at least) the *minimum* vote required for the passage of any motion. Second, nothing in section -619 clearly addresses whether the General Assembly intended that a simple majority of the quorum be considered the *maximum* vote requirement.

In my opinion, a court would probably rely on some or all the following inferences from section -619 to conclude that section -619(c)(1)(C) does not prohibit school boards from establishing a *higher* vote requirement for certain motions.

First, section -619 as a whole seems mainly concerned with what is minimally required for the school board to conduct business. Section -619(c) is almost entirely concerned with addressing the number of persons who must be present to validly convene and conduct a meeting at which official action can take place. For example, subsection -619(c)(1)(B) requires that no vote may take place until a quorum has been “established or restored.” And subsection -619(c)(1)(A) requires that a board member must be “physically present at a meeting” to be counted for purposes of establishing a quorum. Subsection -619(c)(2) defines a “quorum” as a majority of the membership of the entire board of directors. These provisions are all designed to establish the minimum requirements for the board to conduct business. The fact that subsection -619(c)(1)(C) is set within this context provides moderate evidence that the provision is also setting the minimum standards for voting.

Second, the General Assembly probably did not intend section -619 to exhaustively cover all rules governing board meetings. This is evident because section -619 itself does not address all matters that might arise in a meeting. For example, the provision does not address how motions are to be made or whether they require a second. In addition, though the statute clearly says a vote cannot be taken when a quorum has not been maintained, the statute does not indicate

whether debate may continue in the absence of the quorum. The statute also does not address how votes are to be tabulated—whether by voice, by hand, by standing, or by ballot. But *Robert's Rules* addresses all these matters.⁴ Therefore, it seems that the General Assembly did not intend for section -619 to foreclose school boards from adopting local rules that govern these more detailed matters, which would certainly include how boards handle procedural motions.

Third, nothing in the wording of subsection -619(c)(1)(C) technically prohibits a two-thirds vote on certain motions. The provision does *not* state that “a majority of a quorum voting affirmatively is *sufficient* for the passage of any motion or resolution.”⁵ Rather, the provision states that a majority of a quorum is “required” for the passage of any motion. This language is consistent with a locally-adopted rule that certain motions only pass upon a two-thirds vote of the quorum, for a two-thirds vote necessarily includes a majority.

In short, while the statute’s language could certainly be clearer, it does not necessarily lead to the view that school boards are prohibited from adopting higher vote requirements.

A final reason can be found in the rationale for requiring a two-thirds vote on procedural motions. Such motions change the rules by which a deliberative body typically abides. Those rules are usually in place to ensure the efficiency and efficacy of the deliberative process and to protect the individual rights of voting members. If a deliberative body can alter the procedural rules by a mere majority vote, the body runs the risk of impinging on the individual rights of members who are in the minority. Thus, *Robert's Rules* describes the two-thirds vote requirement for procedural motions as “a compromise between the rights of the individual and the rights of the assembly.”⁶ The General Assembly could certainly prohibit

⁴ See generally *Robert's Rules* (11th ed.) §§ 4 (on motions in general), 10 (same), 40 (continuing debate in absence of a quorum), 44–45 (voting).

⁵ The General Assembly sometimes does specify when a majority vote will be sufficient. See, e.g., A.C.A. §§ 2-2-110(c) (“For the purpose of amending articles of association [of an agricultural cooperative association]...a majority vote of the votes cast at a meeting at which a quorum is present, in person or by proxy, *shall be sufficient to adopt amendments.*”); 14-233-108(f)(2) (“A majority of the votes which all directors [on the board of a sanitation authority] are entitled to cast *shall be necessary and sufficient to take any action* or to pass any resolution.”). (Emphases added.)

⁶ RONR (11th ed.), p. 401.

school boards from such a compromise, but nothing in section 6-13-619 seems to do so.

For the foregoing reasons, it is my opinion that section 6-13-619 does not prohibit school boards from establishing higher vote requirements on certain motions. As this office has opined on several occasions, local deliberative bodies can adopt their own rules regarding the conduct of their meetings as long as those rules do not conflict with state laws.⁷ Therefore, a school board may use *Robert's Rules* to cover matters that section 6-13-619 leaves open, which, in my opinion, includes the two-thirds vote requirement for certain motions.

Assistant Attorney General Ryan Owsley prepared this opinion, which I hereby approve.

Sincerely,



DUSTIN MCDANIEL
Attorney General

DM:RO/cyh

⁷ See generally Op. Att'y Gen. No. 2011-034 (and opinions cited therein) ("Deliberative bodies have the right to adopt rules of procedure. Such rules, however, must be exercised in conformity with existing laws. In the absence of rules prescribed by statute or adopted by the governing body, the general parliamentary law prevails."). (Internal quotations omitted.)