

OPINION 65-70

Syllabus:

1. All three township trustees must be present actually or

must be notified and given an opportunity to be present to constitute a quorum, but a majority of the Board of Township Trustees must be physically present to transact business.

2. The failure of a member of a board of township trustees to regularly attend the meetings of such board and to properly discharge his duties does not result in a vacancy in such office, but it may be ground for removal of such township officer under Section 3.07, Revised Code.

To: Richard J. Wessel, Butler County Pros. Atty., Hamilton, Ohio
By: William B. Saxbe, Attorney General, April 28, 1965

I have your request for my opinion reading in pertinent part as follows:

"A situation has arisen in a Township of this County which makes it impossible for a quorum of the Board of Township Trustees to meet. One of the trustees is aged and unable to actively engage in the management of the affairs of the Township; has committed no acts constituting apparent grounds for removal; has not indicated any intention to abandon or vacate the office and has expressed a desire to continue in his capacity as a Township Trustee. A second member of the Board contemplates an extended vacation, and will be out of the Township for several months.

"Our question would seem to be 'in the absence of a quorum can Township business be conducted?'

"In the event the opinion requested indicates that the Township business cannot be conducted in the absence of a quorum, it then follows, 'what if any action may be taken to replace either or both of said Trustees?'"

At common law it appears that all had to be present in order to have a quorum. Cline v. Trustees of Wilkesville Township, 20 Ohio St., 288. In Ohio the rule of the common law was abrogated in the case of township trustees by the legislature. By the seventh section of the act of March 14, 1853 (S. + C., 1567), the number of trustees is fixed at three, and by the 14th section it was declared that a majority shall be a quorum to do business at all meetings of the trustees. This statutory provision has been repealed. Cf. 65 Ohio Laws 14. At present the statutes do not define what shall be a board of township trustees quorum. The statute so modifying the common law having been repealed and nothing enacted to take its place, it may well be inferred that the common law is restored. A precise definition of the common law rule on the requirements for a quorum is stated in the case of Slavens v. State Board of Real Estate Examiners, 166 Ohio St.,

285 (1957). In a per curiam decision in the Slavens case supra, the court states at page 286:

* * * * *

"Where authority has been conferred upon an administrative board consisting of three or more members and where at a particular meeting one or more members of the board are absent, such board, in the absence of statutes to the contrary, may act through a majority of a quorum consisting of a majority of the members, providing all members had notice and an opportunity to be present. Merchant v. North, 10 Ohio St., 251. See State, ex rel. Cline, v. Trustees of Wilkesville Township, 20 Ohio St., 288. If all members were required to be present regardless of notice, one member or a minority of the board by staying away could control the majority.

* * * * *

Thus, the common law rule as stated in Cline v. Trustees of Wilkesville Township, supra, has been modified. At the present time, all trustees must be present either actually or "constructively" (i.e., must be notified and given an opportunity to be present) to constitute a quorum, but a majority of the Board of Township Trustees must be physically present to conduct business. Cf. Opinion No. 639, Opinions of the Attorney General for 1957, page 213.

As to the second question raised by your letter concerning the behavior of the trustees and the grounds for removal of a trustee I refer you to Section 503.241, Revised Code, which states:

"Whenever any township officer ceases to reside in the township, or is absent from the township for ninety consecutive days, except in case of sickness or injury as provided in this section, his office shall be deemed vacant and the board of township trustees shall declare a vacancy to exist in such office.

"Such vacancy shall be filled in the manner provided by section 503.24 of the Revised Code. Whenever any township officer is absent from the township because of sickness or injury, he shall cause to be filed with the board of township trustees a physician's certificate of his sickness or injury. If such certificate is not filed with the board within ten days after the expiration of the ninety consecutive days of absence from the township, his office shall be deemed vacant and the board of township trustees shall declare a vacancy to exist in such office.

"This section shall not apply to a township officer while in the active military service of the United States."

Thus, failure to regularly attend meetings apparently is not one of the circumstances which results in a vacancy in a township office. Except for Section 503.241, supra, no Ohio statute can be found which provides that the absence of a township officer from his office results in a vacancy in that office.

It should be noted that failure to attend to the duties of an office may be sufficient ground for the removal of a township trustee under Section 3.07, Revised Code, which reads:

"Any person holding office in this state, or in any municipal corporation, county, or subdivision thereof, coming within the official classification in Section 38 of Article II, Ohio Constitution, who willfully and flagrantly exercises authority of power not authorized by law, refuses or willfully neglects to enforce the law or to perform any official duty imposed upon him by law; or is guilty of gross neglect of duty, gross immorality, drunkenness, misfeasance, malfeasance, or nonfeasance is guilty of misconduct in office. Upon complaint and hearing in the manner provided for in sections 3.07 to 3.10, inclusive, of the Revised Code, such person shall have judgment of forfeiture of said office with all its emoluments entered thereon against him, creating thereby in said office a vacancy to be filled as prescribed by law. The proceedings provided for in such sections are in addition to impeachment and other methods of removal authorized by law, and such sections do not divest the governor or any other authority of the jurisdiction given in removal proceedings."

Accordingly, it is my opinion and you are advised that:

1. All three township trustees must be present actually or must be notified and given an opportunity to be present to constitute a quorum, but a majority of the Board of Township Trustees must be physically present to transact business.
2. The failure of a member of a board of township trustees to regularly attend the meetings of such board and to properly discharge his duties does not result in a vacancy in such office, but it may be ground for removal of such township officer under Section 3.07, Revised Code.