

**OPINION NO. 92-047****Syllabus:**

A majority of the members of a general health district advisory council must be present at the annual meeting required under R.C. 3709.03 in order for a quorum to exist.

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**To: Peter R. Seibel, Defiance County Prosecuting Attorney, Defiance, Ohio**  
**By: Lee Fisher, Attorney General, September 29, 1992**

You have requested an opinion on the following question:

Under Ohio Revised Code Section 3709.03 relative to [general health] district advisory council meetings, is there any requirement that a majority of the members of the board be present at the annual meeting in order for a quorum to exist?

You note the lack of any express statutory requirement that a majority of the council members must be present to constitute a quorum. Guidelines issued by the Ohio Department of Health, however, indicate that a majority must be present to conduct business. You suggest that the lack of an express statutory requirement for a majority would allow a district advisory council to define a quorum as less than a majority.

**General Requirements Relating to a Quorum**

"A quorum is such number of the members of a body as is competent to transact business in the absence of the other members." *Cline v. Trustees*, 20 Ohio St. 288 (1870). The rule currently recognized in Ohio is:

Where authority has been conferred upon an administrative board of three or more members...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.

*In re Slavens*, 166 Ohio St. 285, 286, 141 N.E. 2d 887, 888 (1957) (emphasis added). See also *Federal Trade Comm'm v. Flotill Products, Inc*, 389 U.S. 179, 183 (1967); *State ex rel. Green v. Edmondson*, 12 Ohio N.P. (n.s.) 577 (C.P. Hamilton County 1912). It should be noted that this rule developed as a judicial modification of the traditional common law rule that, in the absence of a statute defining a quorum, all members of a governmental body must be present to conduct business. *State ex rel. Youngs v. Board of Elections*, 81 Ohio App. 209, 213, 78 N.E. 2d 761 (Lucas County 1947); see also *Cline*. Strict application of the traditional requirement for all members to be present, however, was unduly burdensome to the conduct of public business and allowed minority factions to control the majority by refusing to attend meetings. Accordingly, it has now become generally accepted that, if all members have had notice and opportunity to be present, and if a majority are in fact present, that majority can conduct the business of the governmental body, even though no statute expressly states that fewer than all the members constitute a quorum. See generally *In re Slavens*, 166 Ohio St. at 286, 141 N.E.2d at 888.

Many statutes still exist defining the quorum for particular governmental bodies as a majority of the members. See, e.g., R.C. 3709.02 (quorum for the board of health in a general health district). Such statutes were once necessary to

abrogate the older common law rule that *all* members of a governmental entity be present to constitute a quorum. *See, e.g., State ex rel. Youngs v. Board of Elections*, 81 Ohio App. 209, 78 N.E.2d 761 (Lucas County 1947); *Slicer v. Elder*, 2 Ohio Dec. Reprint 218 (C.P. Logan County 1859). Thus, the absence of a statute defining a quorum as a majority does not indicate that a lesser number may constitute a quorum. Because of the modification of the traditional rule, it is no longer necessary to enact legislation to allow governmental bodies to conduct business when only a majority of the members are present. In the absence of a defining statute, the definition of a quorum is governed now by the modified common law rule, unless the governmental body involved has authority to adopt its own definition.

**General Health District Advisory Council Has no Authority to Determine its own Quorum Requirement**

There is no statute setting the number required for a quorum with respect to a general health district advisory council. Nor is there any statute expressly conferring any authority on such council to determine a quorum standard different from the common law rule. *See, e.g., 1978 Op. Att'y Gen. No. 78-047* (community mental health and retardation board had no authority to alter common law quorum standard). *See generally State ex rel. Hunt v. Fronizer*, 77 Ohio St. 7, 16 (1907) ("the general assembly will not be presumed to have intended to abrogate a settled rule of the common law unless the language used in a statute clearly imports such intent"). Because a general health district advisory council is limited to those powers conferred on it by statute, an advisory council cannot therefore fix its own quorum requirements by rule or regulation as do various voluntary organizations. *Cf. State ex rel. Pfeifer v. Stoneking*, 80 Ohio App. 70 (Muskingum County 1946) (party committee may set its own quorum requirements and is not bound by common law in absence of legislative definition).

**Conclusion**

It is, therefore, my opinion, and you are hereby advised that a majority of the members of a general health district advisory council must be present at the annual meeting required under R.C. 3709.03 in order for a quorum to exist.