

Kirk Allen

From: Kirk Allen <KAllen@1ststriketech.com>
Sent: Friday, April 19, 2013 9:41 PM
To: Chapin Rose (cr@chapinrose.net)
Subject: Patrick Participated in Votes

I would appreciate a close review of the case law referenced! Prosser v Fox Lake is an Illinois Supreme court case and its clear from that case, Mr. Patrick cannot avoid his responsibilities of voting as a county board member. His "inaction" constitutes Action according to Case law!

Thanks
Kirk Allen

Facts:

1. 18 County Highway Resolutions involving State and Federal Money were passed today.
2. Mr. Patrick was present and counted towards a quorum of the board.
3. Mr. Patrick refused to vote during the voting process.
4. If a quorum is present, elected officials **cannot avoid their voting responsibilities by refusing to vote when present at a meeting. Prosser V Fox Lake** (see Launtz v. People ex. rel. Sullivan (1985), 113 Ill 137, see also People ex. rel. Anderson v. Chicago and Northwestern Ry. Co. (1997) 396 Ill 466.)
5. **(55 ILCS 5/2-1005)** (from Ch. 34, par. 2-1005)
Sec. 2-1005. Quorum; approval of ordinances. A majority of the members of any county board **shall constitute a quorum** for the transaction of business; and all questions which shall arise at meetings **shall be determined by the votes of the majority of the members present**, except in such cases as is otherwise provided.
6. **(55 ILCS 5/2-1006)** (from Ch. 34, par. 2-1006)
Sec. 2-1006. Open meetings. The county board shall sit with open doors, and all persons may attend their meetings. The vote on all propositions to appropriate money from the county treasury **shall be taken by "ayes" and "nays"** and entered on the record of the meeting. (Source: P.A. 86-962.) **No provisions in County Code permit an elected official to refuse to vote. It specifically instructs an "ayes" and "nays" shall be taken. The law is SILENT in county code for abstaining or refusing to vote.**
7. Inaction or failure to vote **should be given the effect of a "yea" vote. Prosser V Fox Lake**
8. A councilman is elected for the purpose of expressing an opinion. Action, and **not inaction, is a duty that he assumes with the office**, We therefore conclude that as the rule known as the common-law rule is a proper and efficient rule to adopt in order that municipal business shall be conducted with a proper regard to the wishes of its citizens, This common-law rule may be stated to be that **the legal effect of refusing to vote is an acquiescence in the action taken by the majority of those who do vote. Babyak v. Alten, 106 Ohio App. 191, 154 N.E.2d 14 [1958]**.
9. The Edgar County Board adopted Roberts Rules of Order to be followed for all Meetings.
Question from Roberst Rules of order

Is it true that the president can vote only to break a tie?

Answer: No, it is not true that the president can vote only to break a tie. **If the president is a member of the voting body, he or she has exactly the same rights and privileges as all other members have, including the right to make motions, to speak in debate, and to vote on all questions.**

Question:

Isn't it true that a member who has a conflict of interest with respect to a motion cannot vote on the motion?

Answer: Under the rules in RONR, *no member can be compelled to refrain from voting* simply because it is perceived that he or she may have some "conflict of interest" with respect to the motion under consideration. If a member has a direct personal or pecuniary (monetary) interest in a motion under consideration not common to other members, the rule in RONR is that he should not vote on such a motion, but even then **he or she cannot be compelled to refrain from voting.**

10. The County Board passed a resolution **compelling** Mr. Patrick to refrain from voting. This not only violates Illinois Supreme Court case law (Prosser v Fox Lake) but also violates county code that states members present SHALL vote with ayes and nays but also violates Roberts Rules of order. Elected officials **cannot compel other elected officials to refrain from performing the very duties he was elected to perform.**

For all the reasons outlined above, it's clear Mr. Patrick, through his inaction, has in fact voted on all 18 resolutions pertaining to the Highway Department and those resolutions involve the expenditure of State and Federal money. His recusal letter has been violated because he in fact participated in a vote and that fact is upheld with Illinois Supreme Court case, Prosser v. Fox Lake.

Now that Mr. Patrick has in fact violated his recusal letter who is going to lead the charge to hold him accountable and force either his prosecution or removal from office?

Sincerely,

Kirk Allen
2174-508-0564