

Kirk Allen

From: Kirk Allen <kirk@edgarcountywatchdogs.com>
Sent: Wednesday, May 08, 2013 11:17 AM
To: 'statt@edgarcountyillinois.com' (statt@edgarcountyillinois.com)
Cc: 'voigtjeff3@aol.com'
Subject: How failure to vote is applied.

Mark,

I understand Karl's motion to correct the minutes was because it takes a majority of the members to pass anything. That being the case, when members fail to vote or refuse to vote, or in this case, vote present, I believe Illinois Supreme Court case Prosser V Fox Lake and cases referenced in that case make it clear. The motion in question on the minutes, based on case law, passed with a 6:1 margin. When three voted present, those votes become a yea vote based on legal opinions shared with me.

I think you will find these opinions also have a direct impact on the recusal letter of Mr. Patrick.

Just wanted you to have the information.

Thanks
Kirk

1. 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.)
2. **Inaction or failure to vote should be given the effect of a "yea" vote.** Prosser V Fox Lake
3. 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]).