



TEXAS EDUCATION AGENCY

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OPINION COMMITTEE

FILE # ML-45754-08
I.D. # 45754

Robert Scott
Commissioner

July 2, 2008

Honorable Gregg Abbot
Attorney General of Texas
Post Office Box 12548
Austin, Texas 78711-2548

RQ-0725-GA

Re: Effect of Subsection 11.051(a-1), Texas Education Code, on Voting Requirements for School Boards

Dear General Abbott:

I am writing to seek your opinion as to the effect, if any, of the provisions of Subsection 11.051(a-1), Texas Education Code, as added by House Bill 2563, enacted by the 80th Regular Legislative Session, on the number of votes necessary for action by a school district board of trustees.

We understand the default requirement for action by a governmental body to be the common-law standard of a majority of votes cast at a meeting at which a quorum is present¹. However, the enactment of Subsection 11.051(a-1) may have changed that standard for purposes of school district board of trustees. That subsection provides as follows:

(a-1) Unless authorized by the board, a member of the board may not, individually, act on behalf of the board. The board of trustees may act only by majority vote of the members present at a meeting held in compliance with Chapter 551, Government Code, at which a quorum of the board is present and voting. The board shall provide the superintendent an opportunity to present at a meeting an oral or written recommendation to the board on any item that is voted on by the board at the meeting.

The language of subsection (a-1) could be read to impose additional requirements beyond the common-law rule in two ways. The phrase "may act only by majority vote of the members present" could be read as requiring an affirmative vote of a majority of the members physically present at the meeting. For example², if seven members were

¹ See, Texas Attorney General's Opinions GA-412 (2006) and GA-554 (2007).

² Both examples in this paragraph assume a seven-member school board.

present and a motion received three votes for and two against with two abstentions, the measure would pass under the common-law rule but would not have received affirmative votes of a majority of the members present. Similarly, the phrase "at which a quorum is present and voting" could be read as requiring a quorum of the body to vote in addition to the requirement that a quorum be physically present. For example, if a measure received two votes for and one against with four abstentions, the number of members fixed for a quorum would not have cast a vote.

The legislative history of House Bill 2563 does not evidence an intent to change the common law rule for voting by a school board³. The language of subsection 11.051(a-1) was not changed from the introduced version of the bill. The three bill analyses present that section as a response to allegations of individual school board members acting without authorization of the board, referencing a newspaper article describing "routine violations by board members of operating procedures, of micromanagement of the district's daily operations, and of threatening district employees."⁴ Although the bill analyses do repeat the phrasing of Subsection 11.051(a-1), there is no discussion of an intent to change the common law rule for passage of a measure by vote of the school board. We understand the purpose of Subsection 11.051(a-1) to be one of emphasizing the corporate nature of a school board and the absence of any inherent authority in individual members to exercise the powers of the board of trustees.

My questions are:

1. Does Subsection 11.051(a-1) in any way alter the common-law rule for determining the number of votes necessary for a school district board of trustees to act in its official capacity?
2. If your answer to question number 1 is "yes", for a school district board of trustees to successfully exercise its authority, must the proposed measure receive votes in the affirmative from a majority of the members physically present?
3. If your answer to question number 1 is "yes", and your answer to question number 2 is "no", must a number of members equal to that fixed for a quorum actually cast a vote (i.e., excluding abstentions), regardless of whether that vote is for or against the proposal?
4. If your answer to question number 1 is "yes", and a school district acted in accordance with the common-law rule but did not meet the requirements of Section 11.051(a-1) on or after September 1, 2007⁵, what is the legal status of those actions?

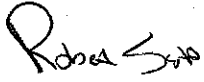
Thank you for considering this request. Should you need any additional information, please feel free to contact me or David Anderson, General Counsel, at (512) 463-9720.

³ Versions of the bill and bill analyses are available at <http://www.capitol.state.tx.us/BillLookup/Text.aspx?LegSess=80R&Bill=HB2563>

⁴ The quoted language is repeated in the "BACKGROUND AND PURPOSE" section of the House bill analysis, as well as both bill analyses (at the section labeled "AUTHOR/SPONSOR'S STATEMENT OF INTENT") prepared in the Senate.

⁵ House Bill 2563 took effect September 1, 2007.

Sincerely,

A handwritten signature in black ink, appearing to read "Robert Scott". The signature is written in a cursive style with a large initial "R" and a stylized "S".

Robert Scott
Commissioner of Education

RS/da/ds