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City of Oregon, Ohio, 5330 Seaman Road, Oregon, OH 43616-2633

Ordinance No. 020 -2026

Authorizing The Mayor And Finance Director To Amend The Sales And Purchase Agreement With Capacity, LLC, A Florida Limited Liability Company And Oregon On The Bay Regional Economic Development Foundation, An Ohio Non-Profit Corporation (Foundation) For The Purpose Of Extending The Time Period For The Pipeline And Emissions Contingencies, Adding A New Contingency For Electric Infrastructure, Increasing The Purchase Price To Include The Purchase Of Four (4) New Properties (Located On Wynnscape Drive), And Adding The Requirement Of A Preliminary Site Plan To The Economic Development Agreement; ~~And Declaring An Emergency~~

Summary And Background

In accordance to Ordinance No. 183-2024, passed by Council on November 4, 2024, the City and the Oregon On The Bay Reginal Economic Development Foundation (the Foundation) and Capacity, LLC (Capacity) entered into a Purchase and Sales agreement for the sale of approximately 168.452 acres of land described as the Cedar Point Industrial Park.

On March 17, 2025, in accordance to Ordinance No. 56-2025, Capacity and the City entered into its first amendment to the Purchase and Sales agreement to extend the time period for completion of the title work and ALTA survey.

On August 11, 2025, in accordance to Ordinance No. 128-2025, Capacity and the City entered into a second amendment to the Purchase and Sales agreement to extend the time period for the Pipeline Contingency, Emissions Contingency, and Load Study Contingency to March 31, 2026, extend the time period by sixty (60) days for the Zoning Contingency, and increase the purchase price from Seventeen Million Three Hundred Thousand Dollars and No Cents ($17,300,000.00) to Seventeen Million Four Hundred Thousand Dollars and No Cents ($17,400,000.00).

Capacity wishes to enter into a third amendment to the Purchase and Sales agreement to extend the time period for the Pipeline and Emissions Contingencies to 5:00 p.m. Eastern Daylight Time (EDT) on September 30, 2026; add a new Contingency for Electric Infrastructure with a time period to 5:00 p.m. EDT on September 30, 2026; increase the purchase price from Seventeen Million Four Hundred Thousand Dollars and No Cents ($17,400,000.00) to Eighteen Million Dollars and No Cents ($18,000,000.00) to include the purchase of four (4) additional properties; and adding a requirement of a preliminary site plan to the economic development agreement. **Now, Therefore,**

Be It Ordained By The Council Of The City Of Oregon, Ohio, That:

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Section 1. The Mayor and Finance Director are hereby authorized to enter into an agreement with the Oregon on the Bay Regional Economic Development Foundation, an Ohio Non-profit Corporation and Capacity, LLC a Florida Limited Liability Company to add a third amendment to the Purchase and Sales agreement in accordance with Exhibit A, attached hereto and made a part hereof with such revisions and additional terms as required by and subject to approval by the Director of Law .

Section 2. It is hereby found and determined that all formal actions of this Council concerning and relating to the passage of this ordinance were adopted in an open meeting of this Council and that all deliberations of this Council and its committees that resulted in such formal actions were in meetings open to the public, in compliance with all legal requirements including Section 121.22 of the Revised Code of Ohio and that the reading and adoption of this ordinance complies with the provisions of Article III, Section 9, of the City Charter, as amended.

Section 3. ~~This Ordinance is deemed an emergency measure and shall take effect immediately upon its passage and signature by the Mayor. The reason for the emergency lies in the fact that this Ordinance is necessary to amend the Purchase and Sales agreement to extend the time to complete the pipeline and emission contingencies, add and complete a new contingency for electric infrastructure, purchase four (4) new properties, and complete a preliminary site plan, and allow additional time for public input to incorporate into the Economic Development Agreement.~~

Vote on passage ~~as an emergency:~~ Yeas 3 Nays 2 Abs. 1

Passed ~~as an emergency measure~~ on: February 09, 2026

President of Council

Attest:

Clerk of Council

Approved:

Mayor

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"Exhibit A"

THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT

THIS THIRD AMENDMENT TO PURCHASE AND SALE AGREEMENT (this "Third Amendment") is made effective as of this 29th day of January, 2026 (the "Amendment Date"), by and between **CITY OF OREGON, OHIO,** an Ohio municipal corporation duly organized and validly existing under the Constitution, the laws of the State of Ohio and its Charter (the City"), the **OREGON ON THE BAY REGIONAL ECONOMIC DEVELOPMENT FOUNDATION,** an Ohio non-profit corporation (the "Foundation" and, together with the City, the "Seller"), and **CAPACITY, LLC,** a Florida limited liability company (the "Buyer").

RECITALS

WHEREAS, Seller and Buyer are parties (collectively, the "Parties") to that certain Purchase and Sale Agreement relating to certain real property described as Cedar Point Industrial Park dated November 14, 2024, as more fully described in the Agreement (as the same has been amended and is amended hereby and may hereafter be amended or restated from time to time, the **"Agreement"**).

WHEREAS, the Parties amended the Agreement on February 21, 2025 (approved by City Council on March 17, 2025, pursuant to Ordinance No.56-2025) and August 11, 2025 (pursuant to City Council Ordinance No. 128-2025) to extend and revise certain contingencies.

WHEREAS, the Parties desire to amend the Agreement as set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, Seller and Buyer hereby agree as follows:

1. Recitals: Definitions. The recitals set forth above are true and correct and are incorporated herein in their entirety. Capitalized terms used but not defined herein shall have the same meaning as given to them in the Agreement.

2. Amendments to the Agreement. The Agreement shall be amended as follows:

(a) Section 1 of the Agreement is hereby amended to provide that the Property consists of approximately 176.666 acres in the City, County of Lucas, State of Ohio, of land more particularly described on Exhibit A attached hereto this Third Amendment (the "Land"), and is hereby amended to restate subsection b.:

- b. Parcel Numbers 4409984, 4410204, 4493263, 4493264, 4475621, 4475624, 4475631, and 4475637 owned by the Foundation.

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(b) Section 2 of the Agreement is hereby amended to provide that the purchase price for the Property shall be Eighteen Million Dollars and No Cents ($18,000,000.00).

(c) Sections 11(C) and 11(D) of the Agreement are hereby amended to provide that the Pipeline Contingency Period and the Emissions Contingency Period are both be extended to 5:00 PM, Eastern Daylight Time (EDT), on September 30th, 2026.

(d) Section 11(E) of the Agreement is hereby deleted in its entirety and the following is substituted in its place:

E. ELECTRIC INFRASTRUCTURE CONTINGENCY. Buyer shall have a period commencing on the Effective Date until 5:00 PM, Eastern Daylight Time (EDT), on September 30th, 2026, (the "Electric Infrastructure Contingency Period") to coordinate with the local utility provider to secure the necessary easements, property, and equipment for the local utility provider to construct a switchyard and associated transmission infrastructure to serve the project (the "Electric Infrastructure Contingency"). In the event the Electric Infrastructure Contingency is not satisfied in a manner acceptable to Buyer by the end of the Electric Infrastructure Contingency Period, the Buyer may terminate this Agreement and Buyer shall receive a full refund of the Deposit (other than the Independent Consideration, which shall be disbursed to City).

(e) Section 11(H) of the Agreement is hereby amended to provide that the Economic Development Agreement shall include a preliminary site plan that identifies the location of easements, buildings, and infrastructure pertinent to the project.

(f) Section 2(a) of the Agreement substitutes Title Company from Mercantile Title Agency to First American National Commercial Services (the "Title Company") and the Parties hereby instruct Mercantile Title Agency to transfer the earnest money deposit to the Title Company.

3. Ratification. Except as specifically herein amended, all terms, provisions, conditions and exhibits contained in the Agreement are hereby confirmed, ratified and restated and shall remain unmodified and in full force and effect. In the event that any provision of this Third Amendment shall conflict with the terms, provisions, conditions, and exhibits of the Agreement, the terms, provisions, conditions and exhibits of this Third Amendment shall govern and control.

4. Governing Law. This Third Amendment shall be an agreement made under,

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governed by and construed in accordance with, the terms of the laws of the State of Ohio.

5. Execution of Amendment. This Third Amendment may be executed in any number of counterparts and by each of the undersigned on separate counterparts, and each such counterpart shall be deemed to be an original, but all such counterparts put together shall constitute but one and the same Third Amendment. This Third Amendment may be executed by signatures exchanged between the parties by email, "pdf' or DocuSign and such email "pdf' or DocuSign signatures shall be deemed to constitute fully effective signatures.

[SIGNATURES FOLLOW]

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IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to the Purchase and Sales Agreement to be executed under seal by their respective duly authorized representatives, to be effective as of the Amendment Date.

CITY:

CITY OF OREGON, OHIO

By: _____
Steven R. Salander, Mayor

Date: 3/12/2026

Approved as to form:

_____
Law Director

CITY SIGNATURE TO THIRD AMENDMENT

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IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to the Purchase and Sales Agreement to be executed under seal by their respective duly authorized representatives, to be effective as of the Amendment Date.

FOUNDATION:

OREGON ECONOMIC DEVELOPMENT FOUNDATION,
an Ohio non-profit corporation

By: Craig A Albers

Print Name: Craig A. Albers

Title: OEDF Board President

Date: March 24, 2026

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IN WITNESS WHEREOF, the parties hereto have caused this Third Amendment to the Purchase and Sales Agreement to be executed under seal by their respective duly authorized representatives, to be effective as of the Amendment Date.

BUYER: CAPACITY, LLC and/or any of its assigns

Signed by:
John D. Martin 3/25/2026
3D8654A9A57E493...

GUARANTORS SIGNATURE TO THIRD AMENDMENT

UPTERRA GROUP, LLC

By: Signed by: John D. Martin 3/25/2026
3D8654A9A57E493...
John D. Martin
Managing Director

HIGHGROUND COMMERCIAL INVESTMENTS, LLC

By: Signed by: H. Gabriel Uhrig 3/25/2026
040430C7E234473...

H. Gabriel Uhrig
Managing Director

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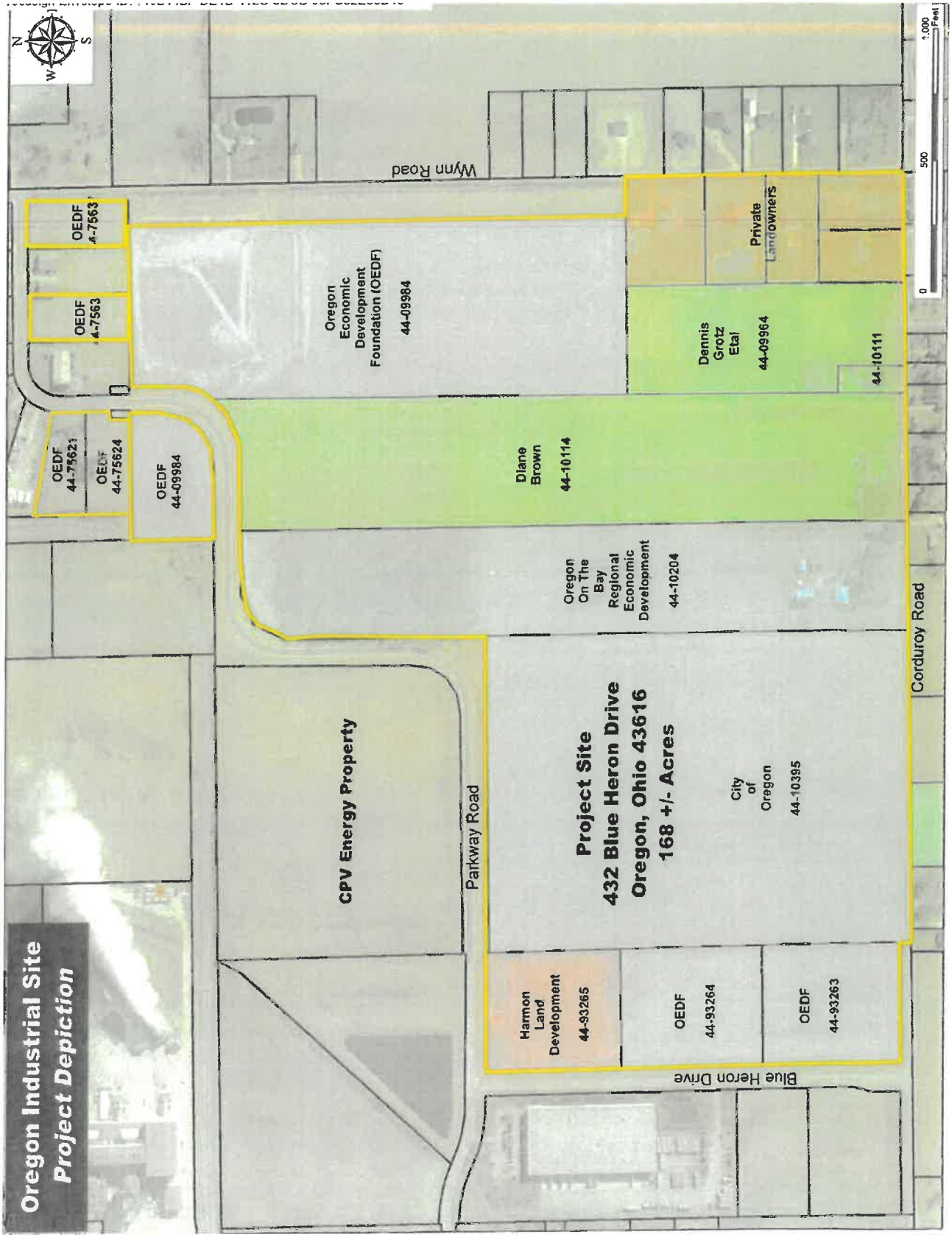
Exhibit A



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Josette Snyder

From: Chynna Fifer
Sent: Monday, February 23, 2026 5:51 PM
To: Josette Snyder
Subject: Legal Opinion

Josette,

This is what was sent to all of the council through a blind carbon copy.

Chynna Fifer
Acting Law Director
City of Oregon
Office: (419) 698-7166
Cell: (419) 932-5930

From: Chynna Fifer
Sent: Thursday, February 19, 2026 4:00 PM
To: Steven Salander <ssalander@oregonohio.org>; Paul Roman <proman@oregonohio.org>
Subject: My attempt to simplify the issue

The City of Oregon, acting under its statutory authority, follows Robert's Rules of Order for its council proceedings. According to Robert's Rules of Order, Revised, specifically RONR 44:1, a majority is defined as the number of affirmative votes compared to the total votes cast, with abstentions not counted as votes.

On the date of the vote regarding Ordinance No. 20 – 2026, the council's voting record was as follows:

* Three members voted in favor of the ordinance.
* Two members voted against the ordinance.
* One member abstained due to a conflict of interest.

This resulted in five council members present and eligible to vote. The abstention, made in accordance with R.C.2921.42, is not counted as a vote, so only the affirmative and negative votes are considered when determining the majority.

With three affirmative votes out of five total votes cast, the majority of council members supported the ordinance. Consequently, Ordinance No. 20 – 2026 was passed in accordance with City of Oregon ordinances and Robert's Rules of Order.

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Chynna Fifer
Acting Law Director
City of Oregon
Office: (419) 698-7166
Cell: (419) 932-5930

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DAVE YOST
OHIO ATTORNEY GENERAL

Office of the Solicitor General
Opinions Unit
Office (614) 752-6417
Fax (614) 466-0013

February 18, 2026

VIA EMAIL: cfifer@oregonohio.org

Acting Law Director, Chynna Fifer
City of Oregon, Ohio
5330 Seaman Road
Oregon, OH 43616

Re: Request for Opinion

Dear Acting Law Director Fifer:

Thank you for contacting the Ohio Attorney General's Office regarding "the implications of a council member abstaining from a vote due to a conflict of interest and whether abstention in this context alters the threshold required for a majority vote."

Under Ohio law, the Attorney General may provide legal advice and formal or informal opinions only to certain public officials in connection with their official duties--specifically: state officers, boards, or commissions; county prosecuting attorneys; law directors of home-rule townships; and, when required by resolution, the Ohio General Assembly. See R.C. 109.12- 109.14. Because municipal law directors are not included in this list, we are unable to issue an advisory opinion on this matter.

While we cannot provide legal advice, we can confirm that the prior opinions referenced in your memorandum – OAG 1998-007 and 1999-004 – have not been overruled or modified by subsequent opinions. Additionally, the City of Oregon's ordinances in Title 3, Chapter 111 (including Section 111.03 on quorum and voting) appear relevant. You may also consult the Ohio Municipal League for further assistance.

Please note that this correspondence does not constitute a formal or informal opinion of the Attorney General's Office and should not be considered legal advice.

Respectfully,

DAVE YOST
Ohio Attorney General

Robert R. Cupp
Supervising Attorney, Opinions Unit
Office of the Solicitor General

RRC/fmr

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MEMORANDUM

To: The Attorney General
From: Chynna L. Fifer
Date: February 12, 2026

RE: Effect of a vote in abstention due to a conflict of interest.

Issue

Whether a vote in abstention due to a conflict of interest reduces the number of council members counted as present for purposes of establishing a quorum, and whether this affects the threshold for a majority vote.

Brief Answer

The City of Oregon, acting under its statutory authority, follows Robert's Rules of Order for its council proceedings. According to Robert's Rules of Order, Revised, specifically RONR 44:1, a majority is defined as the number of affirmative votes (AYEs) compared to the total votes cast, with abstentions not counted as votes.

On the date of the vote for Ordinance No. 20 - 2026, six of seven council members were present. Five members were present and eligible to vote. Three members voted in favor of the ordinance, two members voted against it, and one member abstained due to a conflict of interest. Because an abstention is not considered a vote under Robert's Rules of Order, only the votes for and against the ordinance are counted when determining the majority.

Therefore, with three affirmative votes out of five total votes cast, the majority supported the ordinance. As a result, Ordinance No. 20 - 2026 passed in accordance with Robert's Rules of Order.

Statement of Facts

The City of Oregon is seeking an opinion from the Ohio Attorney General's office as to whether Ordinance No. 20 - 2026 did pass as a non-emergency measure at the Council Meeting on February 9, 2026. During the council meeting the proposed ordinance was amended to a non-emergency measure by City Council prior to the vote.

Voting Breakdown for Ordinance No. 20 - 2026

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The City of Oregon's City Council consists of seven members. On the date of the council meeting concerning Ordinance No. 20 - 2026, one council member was excused from the proceedings due to a scheduling conflict related to their employment. Another member abstained from voting on the ordinance because of a conflict of interest. As a result, five members were present and eligible to vote on the ordinance.

During the vote, three council members voted in favor of passing the ordinance, while two members opposed it. This resulted in a tally of three affirmative votes, two negative votes, and one abstention stemming from a conflict of interest.

Analysis

The question is whether this outcome constitutes a valid majority for approval of a non-emergency measure considering the abstention. The answer depends on the governing rules for calculating a majority in such circumstances. If the majority is defined by the number of members present and voting, the abstention may lower the threshold required for passage. If the majority is defined by the total membership, the abstention does not affect the threshold, and more votes may be required for approval. It is therefore important to consult the relevant legislative procedures and municipal code to determine how abstentions are treated in the context of council votes.

An example of one manner of analyzing a vote when a number of members abstain appeared in Attorney General Opinion 98-007. That opinion states the State Teachers Retirement Board may make decisions by a majority of voting members, excluding abstentions, as long as there is a quorum present. See 1998 Op. Att'y Gen. No. 98-007 (with all nine members present, a motion carries upon the affirmative vote of four members, with five abstentions). The Board, pursuant to its statutory authority, had adopted Robert's Rules of Order, which states that, unless otherwise specified, the set of members to which the proportion of votes required applies "is always the number of members present and voting." Gen. H. Robert, Robert's Rules Order, Newly Revised, 397 (9th ed. 1990). This rule permits action to be taken when a number of members are required to refrain from voting because of conflicts of interest. Id. at 398; see 1998 Op. Att'y Gen. No. 98-007. Robert's Rules does not prescribe a minimum number of votes that must be cast for this rule to hold. Also see, Att'y Gen. 1999-004.

Under the Rules in Robert's Rules of Order, Revised, no one member can be compelled to refrain from voting simply because it is perceived that he or she may have a "conflict of interest" with respect to the motion under consideration. If a member has a direct personal or monetary interest in a motion under consideration not common to other members, the rule is that members should not vote on such a motion, but even then he or she cannot be compelled to refrain from voting. (RONR (12th ed.) 45:4.)

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While Robert's Rules of Order may not expressly address the specifics of conflicts of interest, the Ohio Revised Code and guidance from the Ohio Ethics Commission provide relevant legal standards and procedures for such situations. Both of these authorities establish clear requirements regarding when public officials must abstain from voting due to financial or personal interest. Under Ohio law, council members are expected to refrain from participating in decisions where a conflict of interest exists, and the procedures for handling these abstentions are set forth in the applicable statutes and ethics guidelines.

There are four main restrictions in R.C. 2921.42. The laws prohibit a public official or employee from: 1. Authorizing a public contract in which the official, a family member, or a business associate has an interest (R.C. 2921.42(A)(1)); 2. Authorizing an investment of public funds in which a family member or business associate has an interest or from which a family member or business associate receives a fee (R.C. 2921.42(A)(2)); 3. Profiting from a public contract authorized by the official or by a board on which he or she sits unless the contract was competitively bid and awarded to the lowest and best bidder (R.C. 2921.42(A)(3)); and 4. Having an interest in a public contract of any public agency with which he or she is connected (R.C. 2921.42(A)(4)).

In this case, the City Council member who abstained owns a piece of land that could potentially be purchased for an economic development project discussed in Ordinance No. 20–2026. This abstention was appropriate and consistent with the requirements set forth in Ohio Revised Code R.C. 2921.42(A)(4). Under this statute, public officials are prohibited from participating in matters where they have an interest in the profits or benefits of a public contract entered into by or for the use of the governmental entity with which they are connected. Therefore, the council member's decision to abstain ensured compliance with the ethical standards and legal restrictions imposed by Ohio law, thereby maintaining the integrity of the voting process.

Relevant Law and Guidelines

The current relevant Ohio Revised Codes are as follows:

R.C. 2921.42 (A)(4) Having an unlawful interest in a public contract.
(A) No public official shall knowingly do any of the following:
(4) Have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality with which the public official is connected;
(I) As used in this section: (1) "Public contract" means any of the following: (a) The purchase or acquisition, or a contract for the purchase or acquisition, of property or services by or for the use of the state, any of its political subdivisions, or any agency or instrumentality of either, including the employment of an individual by the state, any of

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its political subdivisions, or any agency or instrumentality of either; (b) A contract for the design, construction, alteration, repair, or maintenance of any public property.

The current relevant City of Oregon ordinances are as follows:

City of Oregon, Title 3, Chapter 111

111.03 QUORUM; RECOGNITION OF MEMBERS; EXPLANATION OF VOTE.

(a) A majority of the members of Council shall constitute a quorum for the transaction of business at any meeting, but a smaller number may adjourn the meeting from time to time and may compel the attendance of absent members.

(b) At any meeting at which a quorum is present, any ordinance or resolution may be passed or adopted or any other action may be taken by the affirmative vote of a majority of the members of Council present at such meeting unless a larger number is required by the provisions of the City Charter or by the Constitution or laws of Ohio.

(c) Every member, when wishing to speak, shall be first recognized by the Chair and shall address the Chair as "Mr. President" who shall pronounce his title (Mr. or Councilman, etc.) and name which shall entitle that member to the floor. The speaker shall confine himself to the question.

(d) It shall be in order for members to explain their vote during the call of the roll.

(Ord. 96-1976. Passed 7-12-76.)

111.09 AMENDMENTS; SUSPENSION OF RULES. A motion to amend is susceptible but one amendment thereof. An amendment once rejected may not be moved again in the same form. Any rule, except when otherwise provided by statute or City Charter, may be suspended by votes of a majority of the members of Council without debate. Whenever the term "majority" is used herein, unless otherwise expressly indicated, it shall be a majority of those elected to Council. It shall be in order to amend a resolution or ordinance at any time and if such amendment is made after the second reading, it shall be read again as amended as the second reading and laid over to the next meeting for final action. A member of Council may abstain from voting on any issue provided he or she states the reason for abstention. The abstention shall not be counted either as an affirmative nor negative vote. (Ord. 96-1976. Passed 7-12-76.)

111.12 ROBERT'S RULES OF ORDER.

Robert's Rules of Order, Revised, shall prevail at each regular and special meeting of Council and each Committee of the Whole meeting.

(Ord. 96-1976. Passed 7-12-76.)

City of Oregon, Charter

Sec. III-6. QUORUM.

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A majority of the members of Council shall constitute a quorum for the transaction of business at any meeting, but a smaller number may adjourn the meeting from time to time and may compel the attendance of absent members in such manner and under such penalties as may be prescribed by the rules of Council. At any meeting at which a quorum is present any ordinance or resolution may be passed or adopted or any other action may be taken by the affirmative vote of a majority of the members of the Council present at such meeting unless a larger number be required by the provisions of this Charter, Ordinances, or by the Constitution or laws of Ohio.
(Amended 11-5-02)

The current relevant sections of Robert's Rules of Order, Revised:

Robert's Companion for Local Government Assemblies for Robert's Rules of Order, Revised 12th edition

Some ordinances and bylaws may not clearly define what is a majority vote. A vote definition should address (1) the ratio of AYEs to (2) to the members present, the votes cast, or the NO votes; and (3) how abstentions will be handled §44:1, 7 and 9. In most cases the AYEs define the result, and the NOs are implied, but not always, for example as when roll call votes are required AYE (and NO) votes are what counts, in Robert's Rules an abstention is a non-vote and is not counted §44:1. Usually there is no reason for the presiding officer to ask for abstentions §4:35. Bylaws based on NM Municipal League (NMML) guidance only allow abstentions if there is a conflict of interest, members are thus required to adopt a position. For governing bodies (Town Councils), NMML guidance is that the reason must be stated and entered into the minutes.

§44:7 Two elements affect the bases for decision: (1) the proportion that must concur as a majority, two thirds, three fourths, etc.; and (2) the set of members to which the proportion applies which, when not stated, is always the number of members present and voting.

In the usual situation, where the rules require either a majority vote or two-thirds vote, abstentions have absolutely no effect on the outcome of the vote since what is required is either a majority or two thirds of the votes cast. On the other hand, if the rules explicitly require a majority or two thirds of the members present, or a majority or two thirds of the entire membership, abstention will have the same effect as a no vote. Even in such a case, however, an abstention is not a vote and is not counted as a vote. RONR (12th ed.) 44:1, 44:3, 44:9(a); see also p.66 of RONR in Brief.

Conclusion

When a City Council member faces a conflict of interest, guidance from the Revised Code, the Ethics Commission, and the Attorney General consistently advises that the member should

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abstain from voting. This approach aligns with Robert's Rules of Order, Revised, as well as the City of Oregon Charter and Codified Ordinances, which specify that abstention is not considered a vote. Under these circumstances, the passage of an ordinance requires a majority of the votes cast, unless a higher threshold is stipulated by the Charter, ordinances, or applicable law. Abstentions are excluded from the tally, ensuring that only affirmative and negative votes determine the outcome.

An authoritative interpretation from the Attorney General would assist both the City Council and the broader community in understanding the legal implications of council members abstaining for conflicts of interest. Such guidance would clarify how abstentions should be treated under the relevant legislative procedures, municipal codes, and ethical standards. By obtaining an official opinion, the Council can ensure its actions remain compliant with statutory requirements and best practices, as well as promote transparency in governance. This interpretation would provide a definitive framework for addressing abstentions due to conflicts of interest, helping to resolve any ambiguities and reinforcing public trust in the Council's decision-making process.

Sincerely,

Chynna Fifer
Acting Law Director for the City of Oregon

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OPINION NO. 98-007

Syllabus:

1. In accordance with *Robert's Rules of Order*, actions of the State Teachers Retirement Board are governed by the principle that, when a quorum is present, action may be taken by a majority of the members who vote on a particular matter, excluding those who abstain.
2. When all nine members of the State Teachers Retirement Board are present, and when five members abstain from voting on a particular motion and the remaining four members vote in favor of the motion, the motion is carried.

To: Herbert L. Dyer, Executive Director, State Teachers Retirement System of Ohio, Columbus, Ohio
By: Betty D. Montgomery, Attorney General, January 29, 1998

We have received your request for an opinion relating to the legal effect of abstentions. Your specific question is whether, in a meeting of the State Teachers Retirement System Board, a motion carries upon a vote of four yeas and five abstentions, assuming that all nine members of the Board are present.

Your question arose from a meeting at which all nine members of the Board were present. On a particular vote, five members abstained and the remaining four members cast affirmative ballots. It was submitted that the motion did not pass because it did not receive the affirmative vote of a majority of the members present, but that position has since been challenged. The question is whether the four affirmative votes were sufficient to pass the motion, even though they constituted less than a majority of the members present.

In order to address your concerns, let us first look to the provisions of law governing the State Teachers Retirement System. The State Teachers Retirement System is established pursuant to R.C. Chapter 3307. *See* R.C. 3307.03. It is administered and managed by the State Teachers Retirement Board, which is authorized to adopt rules necessary for the fulfillment of its duties and to adopt policies governing the operation of the System. R.C. 3307.04. Pursuant to this grant of authority, the Board has adopted a policy stating that

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"Roberts' Rules [*sic*] are observed except where the Board has superseded them." State Teachers Retirement System of Ohio, *Board Policies* 15 (rev. March 1995).

It does not appear that the Board has taken any action to supersede *Robert's Rules* on the matter of determining a voting result. Therefore, we turn to those rules to determine how the vote in question should be construed.

Robert's Rules sets forth the general principle that, unless a rule provides otherwise, the basic requirement for approval of an action is a majority vote. Gen. H. Robert, *Robert's Rules of Order, Newly Revised*, 4, 395 (9th ed. 1990). The term "majority vote," when used without qualification, means "more than half of the votes cast by persons legally entitled to vote, excluding blanks or abstentions, at a regular or properly called meeting at which a quorum ... is present." *Id.* at 395. Under this general rule, if a quorum is present, action can be taken by a majority of the votes cast, excluding blanks or abstentions.

Applying this rule to the situation at issue, we find first that a quorum was present because all nine members were in attendance.[1] We turn then to the number of votes cast by persons legally entitled to vote, excluding abstentions, and find that it was four. A majority vote would thus be more than half of the four votes actually cast—or three votes—so that the affirmative votes of four members would clearly constitute a majority vote and would carry the motion in question.

Robert's Rules notes that there may be modifications of the majority vote requirement. Unless otherwise specified, the set of members to which the proportion of votes required applies "is always the number of members *present and voting*." *Id.* at 397. That proportion, however, could be changed by a particular body to require a majority of the members present or of the entire membership. *Id.* at 398.

There is no indication in the instant case that any such modification has been effected with respect to votes of the Board. It appears, further, that such a modification might be undesirable, at least with respect to the regular business of the Board, because it could make it difficult for the Board to transact its ordinary business.

If a majority of the members present must vote for an action in order to pass it, it is impossible for an entity to act if half its members abstain from a particular vote. *Id.* at 398. This result is problematic, especially considering the fact that members are required by ethical principles to refrain from voting on questions in which they have direct personal or pecuniary interests not common to other members of the organization. *Id.* at 402; *see also, e.g.*, R.C. 102.03; R.C. 2921.42; R.C. 2921.43; 1997 Op. Att'y Gen. No. 97-061. A decision to abstain may be the proper exercise of a member's responsibilities, rather than an abdication of the member's duties. *See, e.g., Gogate v. Ohio State Univ.*, 42 Ohio App. 3d 220, 224, 537 N.E.2d 690, 693 (Franklin County 1987) ("[t]he reasons for an abstention are too numerous for speculation"); 1997 Op. Att'y Gen. No. 97-061.

In accordance with *Robert's Rules*, then, actions of the State Teachers Retirement Board are governed by the principle that, when a quorum is present, action may be taken by a majority of the members who vote on a particular matter, excluding those who abstain. Therefore, when all nine members of the Board are present, and when five members abstain

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[1] "A quorum is such a *number* of the members of a body as is competent to transact business in the *absence* of the other members." *State ex rel. Cline v. Trustees of Wilkesville Township*, 20 Ohio St. 288, 294 (1870). By statute, "[a] majority of the members of the state teachers retirement board constitutes a quorum for the transaction of any business." R.C. 3307.09. In the instant case, all nine members of the Board were present so there is no issue concerning the presence of a quorum. *See generally* 1992 Op. Att'y Gen. No. 92-047.

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from voting on a particular motion and the remaining four members vote in favor of the motion, the motion is carried.

The determination of a voting result on the basis of votes cast, as described above, has been upheld by Ohio courts in various circumstances. In 1881, the Ohio Supreme Court held, with respect to a city council, that when all members are present, those who refuse to vote in an election are deemed to have acquiesced in the choice of those who do vote, even if the number voting is less than a majority of the members present. *State ex rel. Shinnich v. Green*, 37 Ohio St. 227 (1881). The effect of this ruling is that members cannot, by refusing to vote, defeat the election or divest the body of the power to elect. *Id.*

The *Shinnich* case considered an election and did not apply its general rule to the transaction of business by an entity, stating instead that in such instances the common law required that a majority of those present vote for a transaction. *Id.* at 234. However, the rule that action can be taken by a majority of those who vote has been applied by other courts to votes on matters other than elections. In particular, in *Babyak v. Alten*, the Lorain County Court of Appeals, considering a vote on the enactment of an ordinance, adopted the general rule "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, 197, 154 N.E.2d 14, 19 (Lorain County 1958); *accord Gogate v. Ohio State Univ.*, 42 Ohio App. 3d at 223, 537 N.E.2d at 692 (considering the vote of a faculty committee on a question of tenure). *See generally* Annotation, *Abstention from Voting of Member of Municipal Council Present at Session as Affecting Requisite Voting Majority*, 63 A.L.R. 3d 1072 (1975).

In 1912, the Hamilton County Court of Common Pleas applied to governmental bodies the rule that, when a quorum is present, action can be taken by a majority of those who vote, stating:

> The general rule applicable to boards, commissions and similar bodies or entities of a definite membership therefore applies, unless the statute otherwise specifically provides, to-wit, that a quorum consists of a majority of its members, and that such quorum, due notice having been given of the time and place of meeting to all members, can exercise the powers of the commission; and further, that a majority of such quorum is the action of the body or commission.
>
> If the meeting is held at the proper time and place and after statutory notice has been given, or if the statute does not provide for the notice, then after reasonable notice, and if members refuse to attend, unless their absence makes a quorum impossible, or if they attend or refuse to vote, such *refusal* to attend or *to vote does not preclude the vote of the majority of those voting* upon the motion or resolution *from being the action of the commission*, even though such majority is less than a majority of the members of the entire commission.

State ex rel. Green v. Edmondson, 12 Ohio N.P. (n.s.) 577, 588 (C.P. Hamilton County 1912) (citations omitted; emphasis added). In that case, the court considered a seven-member building commission and concluded that, when all members attended and three members refused to vote, the remaining four members "unless they divide equally, which is not alleged" could take action to organize the commission. *Id.* at 589.

Your representative has expressed concern that application of the rule described above may be inconsistent with voting rules adopted in other contexts and particularly with 1957 Op. Att'y Gen. No. 639, p. 213. In that opinion, one of my predecessors declined to adopt the rule that an administrative board may act through the majority of a quorum and concluded, instead, that decisions of the Ohio Supreme Court supported only the more narrow rule that, when all members have received notice and a quorum consisting of a majority of the

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membership is in fact present, an administrative board may act through a majority of the membership. That opinion declined to accept as law in Ohio the dictum set forth in *In re Slavens* that an administrative board consisting of three or more members "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) (citations omitted; emphasis added).

This opinion does not reconsider the conclusion reached in 1957 Op. Att'y Gen. No. 639, p. 213 as it was applied to the situation there under consideration.[2] We note, however, that subsequent to the issuance of 1957 Op. Att'y Gen. No. 639, p. 213, the United States Supreme Court cited the *Slavens* case and *State ex rel. Green v. Edmondson* among other authorities in support of the proposition that "[t]he almost universally accepted common-law rule is ... in the absence of a contrary statutory provision, a majority of a quorum constituted of a simple majority of a collective body is empowered to act for the body." *Federal Trade Comm'n v. Flotill Products, Inc.*, 389 U.S. 179, 183 (1967) (authorities cited in footnote 6); *see also* 1992 Op. Att'y Gen. No. 92-047; 1978 Op. Att'y Gen. No. 78-047, at 2-109 ("[u]nder general principles of common law, if a body has a limited number of members, a majority of this limited number constitutes a quorum, in the absence of a statute or charter or bylaw provision to the contrary, and a majority of a quorum is empowered to act for the body").

For the reasons set forth above, it is my opinion, and you are advised, as follows:

1. In accordance with *Robert's Rules of Order*, actions of the State Teachers Retirement Board are governed by the principle that, when a quorum is present, action may be taken by a majority of the members who vote on a particular matter, excluding those who abstain.
2. When all nine members of the State Teachers Retirement Board are present, and when five members abstain from voting on a particular motion and the remaining four members vote in favor of the motion, the motion is carried.

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[2] 1957 Op. Att'y Gen. No. 639, p. 213, concerned the Board of Liquor Control, which then consisted of four members. That Board has been succeeded by the Liquor Control Commission, which consists of three members. R.C. 4301.022. Statutory language now states that the Commission may exercise its powers "by the vote of a majority of the commissioners." R.C. 4301.04.

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OPINION NO. 99-004

Syllabus:

Under R.C. 5709.73, if two members of a board of township trustees abstain from voting on issues of tax abatement for a particular company on the grounds that they have conflicts of interest, then the board lacks a sufficient number of voting members to act on those issues, and the vote of the remaining trustee is not effective to adopt township resolutions regarding those issues.

To: Dennis Watkins, Trumbull County Prosecuting Attorney, Warren, Ohio
By: Betty D. Montgomery, Attorney General, February 1, 1999

We have received your request for an opinion concerning the ability of a township to grant a tax abatement to a company conducting business within the unincorporated area of the township if two of the three township trustees abstain from voting on the grounds that they have conflicts of interest. Your questions are these:

1. If two out of three township trustees abstain from voting on issues of tax abatements for a particular company, declaring themselves as having a conflict of interest, does the sole remaining trustee constitute a quorum for purposes of voting on township resolutions involving those issues?

2. Is the single vote of the remaining trustee valid to adopt or decline to adopt township resolutions regarding issues of tax abatements for the company?

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Your representative has informed us that the township in question is considering granting tax exemptions pursuant to R.C. 5709.73. That statute states that "[a] board of township trustees may, by unanimous vote, adopt a resolution" that declares it a public purpose to make public improvements that are necessary for the development of certain parcels of land located in the unincorporated area of the township. R.C. 5709.73(B)(1). The resolution may exempt from real property taxation a percentage of improvements to land that directly benefits from the public improvements. *Id.* "The board of township trustees may, by majority vote, adopt a resolution" permitting the township to enter into agreements that are necessary or appropriate for the construction of the public improvements. R.C. 5709.73(C).

If the exemption lasts more than ten years or exceeds seventy-five percent, it is necessary to obtain the approval of the board of education of the city, local, or exempted village school district in the territory where the improvements will be located. R.C. 5709.73(B)(2). Approval of the board of education must be made by resolution adopted by a majority of the board. *Id.*

The statute thus provides that, in order to grant a tax abatement, the board of township trustees must adopt the resolution authorizing the tax abatement "by unanimous vote." R.C. 5709.73(A)(1). The board may then adopt resolutions authorizing particular agreements relating to the abatement "by majority vote." R.C. 5709.73(C). The statute does not address the question whether the board may act if two of its three members decline to vote on a particular matter because of conflicts of interest. *See generally* R.C. 505.01 (a board of township trustees consists of three members).[1]

In order to answer your questions, let us first consider the general principles governing the actions of a board of township trustees.[2] A board of township trustees is a public body, which must take official action and conduct deliberations upon official business at open meetings, except as otherwise provided by law. R.C. 121.22. It has been found, under Ohio law, that all members of a board of township trustees must be notified of a meeting of the board, but that a majority of the board - that is, two of the three members - constitutes a quorum[3] that is qualified to take action on behalf of the board. *See State ex rel. Saxon v. Kienzle*, 4 Ohio St. 2d 47, 212 N.E.2d 604 (1965); *In re Slavens*, 166 Ohio St. 285, 141 N.E.2d 887 (1957); 1965 Op. Att'y Gen. No. 65-70; 1934 Op. Att'y Gen. No. 2292, vol. 1, p. 164. Therefore, if two or three trustees are present at a meeting, there is a quorum.

In general, the majority of a quorum may act for a board, provided that all members had notice and an opportunity to be present. *See In re Slavens*; *State ex rel. Green v. Edmond-*

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[1] For ethical reasons, a public official, such as a member of a board of township trustees, may be required to refrain from voting on matters in which that official has an interest. *See* 1998 Op. Att'y Gen. No. 98-007, at 2-39; *see also* R.C. 102.03; R.C. 2921.42; R.C. 2921.43; 1997 Op. Att'y Gen. No. 97-061.

[2] Your questions pertain to a township that has not adopted the limited self-government form of township government pursuant to R.C. Chapter 504, and this opinion considers only townships that have not so acted. Specific provisions of R.C. Chapter 504 govern quorums and voting procedures, and this opinion does not address those provisions. *See* R.C. 504.09-.11.

[3] The term "quorum" has been defined as "such a *number* of the members of a body as is competent to transact business in the *absence* of the other members." *State ex rel. Cline v. Trustees of Wilkesville Township*, 20 Ohio St. 288, 294 (1870).

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son, 12 Ohio N.P. (n.s.) 577 (C.P. Hamilton County 1912) (on seven-member building commission, four members could act by majority vote if three members refused to attend or to vote, except when statute required affirmative vote of five members); 1998 Op. Att'y Gen. No. 98-007; 1965 Op. Att'y Gen. No. 65-70. With respect to a three-member board, however, two members may be a quorum, but a single member does not constitute a majority (*i.e.*, *more than* half) of the quorum. Therefore, two members must act, whether two or three members are present. Under this rule, two or three of the township trustees must be present and voting in order for the board to take action under R.C. 5709.73. If only two members vote, they must concur in order for the board to act. *See, e.g., State ex rel. Saxon v. Kienzle*; 1976 Op. Att'y Gen. No. 76-022; *see also State ex rel. Dry Ridge Dev. Co. v. Hamilton County Bd. of Comm'rs*, 30 Ohio App. 3d 217, 507 N.E.2d 438 (Hamilton County 1986); 1934 Op. Att'y Gen. No. 2292, vol. I, p. 164. *See generally Federal Trade Comm'n v. Flotill Products, Inc.*, 389 U.S. 179 (1967); 1998 Op. Att'y Gen. No. 98-007; 1992 Op. Att'y Gen. No. 92-047; 1978 Op. Att'y Gen. No. 78-047.

It has also been concluded that, if one member of the board of township trustees abstains from acting on a particular matter because of a conflict of interest, the remaining two members may take action on behalf of the board and, if they agree, their action may be considered the unanimous vote of the board. *See* 1985 Op. Att'y Gen. No. 85-010; *see also State ex rel. Dry Ridge Dev. Co. v. Hamilton County Bd. of Comm'rs* (reaching same conclusion with respect to board of county commissioners). *But see* 1934 Op. Att'y Gen. No. 2292, vol. I, p. 164 (citing instances in which requirement of a unanimous vote meant that the votes of all three township trustees were required). This conclusion is based on the principle that a unanimity requirement does not necessarily mean that all members must vote for a proposition, but it may require only "that those who vote on the proposition vote in agreement and that no one dissents." 1985 Op. Att'y Gen. No. 85-010, at 2-38; *cf. Seyler v. Balsly*, 5 Ohio Misc. 210, 210 N.E.2d 747 (C.P. Hamilton County 1965) (finding that a vote by two members of a board of county commissioners satisfied the requirement of R.C. 303.12 that denial of a recommendation of the county rural zoning commission be by unanimous vote of the board when the third member was absent on leave and not voting). Under this principle, if one member of a board of township trustees abstains from voting and the other two concur, the vote is a unanimous vote (and, thus, also a majority vote) and is valid to adopt a resolution under R.C. 5709.73.

It might be argued that the vote of a single member of a board of township trustees may be considered the unanimous vote of the board if the other two members refrain from voting because of conflicts of interest, for in that situation all those voting agree and there is no dissent. This argument is supported by the general proposition that those who abstain from voting are deemed to have acquiesced in the action taken by the majority of those who do vote. *See* 1998 Op. Att'y Gen. No. 98-007.

The proposition that those who abstain from voting are deemed to have acquiesced in the action taken by the majority of those who do vote was applied initially to the election of officers and operated to permit an entity to provide for its own organization. *See State ex rel. Shinnich v. Green*, 37 Ohio St. 227 (1881) (finding that, in an election, those declining to vote are deemed to acquiesce in the choice of those who do vote, and action may be taken by a majority of legal voters who choose to vote, even though the number voting is less than a quorum and less than a majority of those present). This proposition has also been applied to other types of actions. *See, e.g., Gogate v. Ohio State Univ.*, 42 Ohio App. 3d 220, 537 N.E.2d 690 (Franklin County 1987) (vote on tenure by six-member board was three abstentions, two for tenure, and one against; court found abstentions to be acquiescence and stated that in any event there was no showing of substantial prejudice); *Babyak v. Alten*, 106 Ohio App.

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191, 154 N.E.2d 14 (Lorain County 1958) (vote of village council was one abstention, two negative, and three affirmative; abstention was found to be acquiescence to meet statutory requirement of concurrence of a majority of all members elected to the legislative authority).

Other authorities have asserted, however, that a member who abstains does not vote either for or against the matter at issue, *State ex rel. Dry Ridge Dev. Co. v. Hamilton County Bd. of Comm'rs;* 1985 Op. Att'y Gen. No. 85-010, at 2-38, or that abstentions cannot be counted to fulfill a statutory requirement that a given percentage of the members concur, *Davis v. City of Willoughby*, 173 Ohio St. 338, 182 N.E.2d 552 (1962) (where statute required concurrence of three-fourths of the elected members of a city council, abstentions did not count as concurrence). *See also, e.g., State ex rel. Corrigan v. Tudhope*, 41 Ohio St. 2d 57, 60, 322 N.E.2d 675, 677 (1975) (refusal to vote was not considered acquiescence when those abstaining objected to allowing president of city council to vote in case of impasse); *Rajan v. State Medical Bd.*, 118 Ohio App. 3d 187, 692 N.E.2d 238 (Franklin County), *appeal not allowed*, 79 Ohio St. 3d 1449, 680 N.E.2d 1022 (1997) (statute calling for a vote of not fewer than six members required that there be six affirmative votes, not counting abstentions). In addition, it has been stated that those who abstain because they are disqualified due to conflicts of interest are not qualified to act and their offices must be treated as vacant. *See Gitlin v. City of Berea*, No. 58062 (Ct. App. Cuyahoga County Feb. 15, 1990); *see also State ex rel. Attorney Gen. v. Orr*, 61 Ohio St. 384, 56 N.E. 14 (1899). Thus, there is no single principle of law indicating how abstentions are to be treated in all circumstances.

An example of one manner of analyzing a vote when a number of members abstain appeared in a recent opinion of this office. That opinion concluded that the State Teachers Retirement Board could take action by a majority of the members who vote on a particular matter, excluding those who abstain, provided that a quorum is present. *See* 1998 Op. Att'y Gen. No. 98-007 (with all nine members present, a motion carries upon the affirmative vote of four members, with five abstentions). The Board, pursuant to its statutory authority, had adopted *Robert's Rules of Order*, which states that, unless otherwise specified, the set of members to which the proportion of votes required applies "is always the number of members *present and voting*." Gen. H. Robert, *Robert's Rules of Order, Newly Revised*, 397 (9th ed. 1990). This rule permits action to be taken when a number of members are required to refrain from voting because of conflicts of interest. *Id.* at 398; *see* 1998 Op. Att'y Gen. No. 98-007. *Robert's Rules* does not prescribe a minimum number of votes that must be cast for this rule to hold.

A board of township trustees is bound not by *Robert's Rules*, but by principles of statutory and common law.[4] No authority we have discovered has applied to a board of

[4] Although a board of township trustees may adopt reasonable rules governing its procedures, *see* 1992 Op. Att'y Gen. No. 92-032; 1988 Op. Att'y Gen. No. 88-087, the board is bound by principles of statutory and common law and there is no clear authority for the board to vary existing law governing the number of votes required for the board to act. *See, e.g.*, 1992 Op. Att'y Gen. No. 92-047 (general health district advisory council cannot fix its own quorum requirements); 1978 Op. Att'y Gen. No. 78-047, at 2-111 ("[t]he authority of a community mental health and retardation board to establish operating procedures and ...rules... does not clearly express a legislative intent to abrogate the common law standard for determining a quorum"); *cf. State ex rel. Corrigan v. Tudhope*, 41 Ohio St. 2d 57, 322 N.E.2d 675 (1975) (in the absence of constitutional, statutory, or charter provision, city council can determine whether election is by majority or plurality); *State ex rel. Reed v. DeMaioribus*, 131 Ohio St. 201, 2 N.E.2d 506 (1936) (same).

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township trustees the principle that action may be taken by a single trustee if the other trustees decline to vote because of conflicts of interest. Rather, the principle that appears to be applicable in the instant case is that set forth in Ohio case law - namely, that "any action by a board requires that a quorum participate therein, and that a majority of the quorum concur." *State ex rel. Saxon v. Kienzle*, 4 Ohio St. 2d at 48, 212 N.E. 2d at 605. As discussed above, a majority of a board of township trustees - or two members - may constitute a quorum. Regardless of the number of trustees present, however, at least two trustees must participate and concur in any action.

The Ohio Supreme Court has stated clearly that "[a] single member does not constitute a board [of township trustees] and, unless authorized by statute, cannot act as the board." *State ex rel. Saxon v. Kienzle*, 4 Ohio St. 2d at 48, 212 N.E.2d at 605-06. The *Kienzle* case involved a situation in which, because there were two vacancies, only a single member served as trustee in a particular township. Nonetheless, the principle is generally applicable: "if there was a board [of township trustees], [one trustee] acting alone could not act for such board." *Id.* at 48, 212 N.E.2d at 606; *see also State ex rel. Dry Ridge Dev. Co. v. Hamilton County Bd. of Comm'rs* (for board of county commissioners to act, a quorum must be present and voting); *Brophy v. Landman*, 28 Ohio St. 542, 545 (1876) (under the common law rule of quorum, one member of a three-member board "can do no official act"); *Goshen Township Trustees v. Heywood*, No. CA84-02-007 (Ct. App. Clermont County Apr. 8, 1985) (township trustee acting alone cannot authorize acquisition of and payment for medical insurance for township officers and employees); *cf. Fox v. Fox*, 24 Ohio St. 335 (1873) (upholding permit for cattle to run at large granted to township trustee who was one of two trustees who granted the permit and stating that trustee was not disqualified to act; dissenting opinion would require quorum without the interested trustee).

Hence, the principle that abstention does not interfere with unanimity applies only so long as there is a quorum of two township trustees who participate and concur in a particular matter. This result can occur if one trustee has a conflict of interest and must abstain; it cannot occur if two trustees are in that position. The vote of a single trustee cannot be either the unanimous vote of the board or a majority vote of the board.

It appears, accordingly, that if two members of a board of township trustees abstain from voting because of conflicts of interest, the board is unable to act. None of the authorities discussed above conclude that an abstention by a township trustee can be considered a vote for the purpose of having a minimum of two trustees present and voting on an issue. Even though abstentions might, for some purposes, be considered acquiescence, that principle does not appear to override the requirement that two trustees must vote in order for a board of township trustees to take action. Further, it seems inappropriate, if an individual is required to abstain because of a conflict of interest, to count that abstention as a vote either for or against the matter at issue. Therefore, under R.C. 5709.73, if two members of a board of township trustees abstain from voting on issues of tax abatement for a particular company on the grounds that they have conflicts of interest, then the board lacks a sufficient number of voting members to act on those issues, and the vote of the remaining trustee is not effective to adopt township resolutions regarding those issues.

A consequence of the conclusion reached in this opinion is that a township is unable to act on a proposal for a tax abatement under R.C. 5709.73 if two members of the board of trustees have interests in the matter that create conflicts with their duties as trustees. This may prevent the granting of abatements in some situations in which the abatements would be beneficial. Nonetheless, absent more direct guidance from the General Assembly, we are unable to conclude that a single trustee may act for the township under R.C. 5709.73 in the

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circumstances you have described. *See generally, e.g., Frost v. City of Wilmington*, No. CA85-08-014 (Ct. App. Clinton County Jan. 31, 1986) (three-member civil service commission would lack quorum if more than one member found it necessary to recuse self from case; matter could be addressed by amendment of charter to allow for temporary substitution of commission members in cases involving possible conflicts of interest).

For the reasons set forth above, it is my opinion, and you are advised that, under R.C. 5709.73, if two members of a board of township trustees abstain from voting on issues of tax abatement for a particular company on the grounds that they have conflicts of interest, then the board lacks a sufficient number of voting members to act on those issues, and the vote of the remaining trustee is not effective to adopt township resolutions regarding those issues.