

Trustees, County Free High School. Quorum, Number Necessary to Decide Question. Section 5, Laws 1899, p. 59,
Relating to County Free High Schools, Construction Of.

Under the provisions of Sec. 5, Act of 1899, relating to County Free High Schools, four votes must be cast in the affirmative to carry any question.

A Trustee present and refusing to vote is deemed to assent to the act of those who do vote.

Helena, Montana, May 21st, 1906.

Hon. Sydney Fox, County Attorney, Red Lodge, Montana.

Dear Sir: I am in receipt of your letter of May 19th, submitting a proposition with reference to the County Free High School Board, and requiring the construction of Section 5, Laws of 1899, page 56, the proposition submitted being:

"Is it necessary under this section that four votes should be cast in the affirmative to decide any question before the board, or simply that four votes shall be cast on the question?"

The section in question reads as follows:

"A majority of said board shall constitute a quorum for the transaction of all business, but four votes shall be required to decide any question."

It is a general and familiar rule of law that in the absence of statutory provisions to the contrary, a majority of the board of trustees constitute a quorum, and that a majority of the quorum may act.

23 Am. & Eng. Enc. of Law, 569.

And it is settled law in Montana that a refusal to vote is not more potent than a vote cast; that is, a Trustee cannot, by refusing to vote, defeat a measure, while by voting against it he would carry the measure. Also "that those who remain silent shall be deemed to assent to the act of those who do vote."

State ex rel. Young v. Yates, 19 Mont. 239.

The first clause of the Section above quoted only states a well settled rule of law. The second clause, to have any effect at all must modify the general rule stated in the first clause. And, in the light of the rule announced in the Yates case, the only way the second clause can modify the first clause is by requiring a proposition to be assented to by a majority of the entire board; that is, there must be four votes in the affirmative—the entire board consisting of six trustees.

If, therefore, only a quorum of the board is present and three trustees vote for a proposition and the fourth trustee on his name being called refuses to vote, this fact should be entered of record, and he is "deemed to assent to the act of those who do vote" and the proposition, under the ruling in the Yates case, supra, is carried, but, if the fourth trustee votes against the proposition, it is lost by reason of not having received four votes.

Very truly yours,

ALBERT J. GALEN,

Attorney General.