

for employees without a vote of the electors, the ordinance or resolution would become effective without a referendum vote. Therefore, the board of supervisors of such a county would not be authorized to submit the question of the approval of the ordinance or resolution to the voters.

In answer to your second question, a reading of Section 6 of Article XI, supra, makes clear that it contains no authorization for placing on the ballot by initiatory petition of the people the question of adoption of a merit system for county employees. As above noted, Section 6 is self-executing and since initiatory action is not included within its provisions, it necessarily follows that no such power has been conferred.

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STATE OF MICHIGAN: Boards, Commissions, Agencies.
DEPARTMENT OF LABOR - WAGE DEVIATION BOARD: Members,
Proxy Voting by.

Under Section 7 of Act No. 154, P.A. 1964, as amended, the members of the wage deviation board are invested with duties requiring the exercise of judgment and discretion which cannot be exercised by the procedure of proxy voting.

No. 4532

June 21, 1966.

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In your letter of May 12, 1966, you have asked my opinion with respect to the minimum wage law*, as follows:

"May the wage deviation board utilize the procedure of proxy voting on the part of its members in connection with the conduction of its business at regular and special meetings of the board?"

Section 5 of Act No. 154 of the Public Acts of 1964, as amended by Act No. 255 of the Public Acts of 1965, hereinafter referred to as the Act, pursuant to which the wage deviation board was created, provides that a majority of the members constitutes a quorum and that recommendations or reports of the board require a vote of not less than a majority of the members.

A "quorum" as defined in Webster's New International Dictionary (2d ed.), is:

"Such a number of the officers or members of any body as is, when duly assembled, legally competent to transact business."

Making reference to an all but identical definition, the Court of Appeals of the State of New York said at page 107 in *Application of McGovern*, 291 N.Y. 104:

* Act No. 154, P.A. 1964 (M.S.A. 1965 Cum. Supp. § 17.255(1), et seq.).

"By dictionary definition and in common parlance a 'quorum' means such a number of the members of any body as is, when duly assembled, legally competent to transact business. The word 'quorum' implies a meeting, and so the action must be group action, not merely action of a particular number of committeemen as individuals."

It is manifest, therefore, that a "quorum" of the wage deviation board precisely is a *duly assembled majority* of the members of that body, which being thus duly assembled, is thereby legally competent to transact business. That such a *duly assembled majority* cannot be effected or obtained by proxy, but requires the physical presence of a majority of the members, is equally manifest.

Although the foregoing might in itself appear, as a practical matter, to constitute a sufficient answer to the question posed, there is a further legal interdiction applicable to that body in respect to proxy voting which arises because of its responsibility under Section 7 of the Act for establishing deviations from the minimum hourly wage rate set by Section 4 thereof. Such duties clearly require the exercise of personal discretion and judgment and have been entrusted by the legislature to the members of that body, not to delegate, but to exercise. Proxy voting entails the delegation of these personally entrusted duties. A "proxy" is defined in Webster, *supra*, to be:

"The action or practice of voting, making promises, etc., by means of an authorized agent or substitute; ***."

As a matter of law, such duties or powers cannot be delegated. The principle involved has been variously stated, namely:

"It is a general principle of law, expressed in the maxim 'delegatus non potest delegare' that a delegated power may not be further delegated by the person to whom such power is delegated." 42 Am. Jur., Public Administrative Law, § 73, p. 387.

"A delegated authority cannot be redelegated." *Commonwealth v. Armstrong*, 4 Pa. Co. 5, 6; cited in 26A C.J.S., at page 154, footnote 33.

"Where personal trust or confidence is reposed in the agent and especially where the exercise and application of the power is made subject to his judgment or discretion, the authority is purely personal and cannot be delegated to another unless there is a special power or substitution, either expressed or necessarily implied." 3 Am. Jur. 2d, Agency, § 150, p. 541.

In point is the case of *In re Daniel*, 134 N.Y.S. 254, wherein the appellate division of the New York supreme court had before it for review the proceedings of the Republican congressional committee of the twenty-sixth congressional district in designating persons to be voted for as delegates to the Republican national convention. One of the issues before the court arose out of the fact that said committee had a rule in force at the time of the meeting in question whereby proxies of its members were valid. Although Judge Woodward concurred in the opinion of the majority

which held that proxies could be used in political meetings prior to convention, he made clear the inapplicability of the delegation of power or authority to another by use of a proxy where the power or authority to be exercised was that of a public body or public corporation.

In *Wheeler v. River Falls Power Company*, 111 So. 907, the Supreme Court of Alabama, holding that duties invested by the Legislature cannot be delegated, even though they are of minor nature, stated at page 909 of such decision:

“ * * * it is clear that such power, having been committed to the aggregate of the members composing the committee, cannot by it be delegated elsewhere, or to any number of individuals acting separately. Of course, a quorum duly met may exercise the power of the committee. But a quorum is such number of the committee as is competent to transact its business, and that, according to the general law of such bodies, is a majority of the committee. The point here is that individual members of the committee, scattered about the state, cannot be counted to constitute a quorum of a meeting of the committee which in fact they did not attend. This proposition has been often stated, is clearly restated by the Supreme Court of the United States in *United States v. Ballin*, 144 U.S. 1, 12 S. Ct. 507, 36 L. Ed. 321, and further argument is hardly necessary.”

In *Detroit Edison Company v. Corporation and Securities Commission*, 361 Mich. 150, in which a certain action of the corporation tax appeal board (which by statute is “composed of the attorney general as its chairman, the State treasurer, and the auditor general as its secretary.”) was held to be a nullity because the deputies of two of these officers, rather than the officers themselves, were in attendance, the Court stated, at page 157:

“The legislature clearly provided that the attorney general had the privilege and power to designate his deputy or assistant to represent him on the board. The legislature did not grant a similar right to the State treasurer or to the auditor general. Until such a right to so designate is granted to the State treasurer and the auditor general we conclude that it is the legislative wish and mandate that the State treasurer and the auditor general personally act as members of the corporation tax appeal board.”

As there appears to be no statutory provision which would authorize or permit any delegation of powers by members of the wage deviation board, it is, therefore, my conclusion that the utilization of the procedure of proxy voting by members of the wage deviation board in connection with its business at regular and special meetings would be invalid.

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Attorney General.