

tained in MCLA 330.19; MSA 14.809, regardless of the fact that such a hospital is licensed by the state.

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COUNTIES: Board of Commissioners, Election of Chairman

A majority of the members present at a meeting of the county board of commissioners must vote to have an election for chairman by secret ballot.

Opinion No. 4816

May 9, 1974.

Honorable Alfred A. Sheridan
State Representative
The Capitol
Lansing, Michigan 48933

In a recent letter to this office you requested an opinion concerning 1851 PA 156, § 3a, as added by 1973 PA 102, MCLA 46.3a; MSA 5.323(1), which requires open voting by a board of county commissioners or a committee thereof on certain matters. Expressly excluded from this mandatory open voting requirement is the vote held to elect a chairman:

"The names and votes of members shall be recorded on an action which is taken by the board of county commissioners or by a committee of the board of county commissioners if the action is on an ordinance, resolution, or appointment or election of an officer, except the vote for chairman *may* be by secret ballot. . . ." [Emphasis added]

The new section goes on to provide that:

". . . The vote and the name of the member voting on other questions or motions shall be recorded at the request of: 1/5 of the members present. . . ."

Your question is:

"Under the Act, 1/5 of the members present may make it necessary to have a roll call. Since this language is in the bill, will the 1/5 language include the vote by which chairmen are selected?"

In order to answer your question, it is first necessary to deal with an apparent conflict between MCLA 46.3a; MSA 5.323(1) and MCLA 46.3; MSA 5.323 which would appear to require the voting for chairman to be by secret ballot. MCLA 46.3; MSA 5.323 provides:

". . . No votes shall be taken by secret ballot except when voting for chairman of the board or on the appointment of officials or employees. . . ."

While a literal reading of this section would lead one to conclude that the vote for chairman must be by secret ballot, it is doubtful that the legislature intended this result. The purpose of the section appears to be to insure that county government is conducted in the open rather than behind

closed doors. Furthermore, a rule requiring the election of chairmen by secret ballot is one which deviates from the long-established rule requiring an open ballot on any issue upon the request of even one member of the board. OAG, 1961-1962, No 3599, p 277 (February 22, 1962).

Given the fact that at the time MCLA 46.3; MSA 5.323 was enacted the practice was to allow the vote for chairman to be by open ballot upon request, the language of the section can be interpreted as doing no more than continuing this prior procedure with respect to the election of chairman. This conclusion is strengthened by the fact that the above-quoted portion of MCLA 46.3; MSA 5.323 does not specifically state that the vote for chairman must be by secret ballot, but rather excludes this vote from a mandatory open voting requirement.

If the second interpretation is accepted, then there is no need to reconcile the language of MCLA 46.3 and MCLA 46.3a. Even if this interpretation is not accepted, the rules of judicial construction would lead to the conclusion that the vote for chairman may be by open ballot. In *Evans Products Co v State Board of Escheats*, 307 Mich 506; 12 NW2d 448 (1943), the Court held that legislation which is not plain and unambiguous and which contains many apparent inconsistencies is subject to judicial construction. Furthermore, in *Swartwout v Michigan Air Line Railroad Co*, 24 Mich 388 (1872), the Court held that a new statute, which adds a new section to a body of law, may amend by implication other sections of the same body of law. Thus, given the fact that MCLA 46.3a; MSA 5.323(1) was enacted at a later time than MCLA 46.3; MSA 5.323 as well as the fact that the exact meaning of MCLA 46.3; MSA 5.323 is ambiguous, the conflict must be resolved in favor of MCLA 46.3a; MSA 5.323(1).

Your question deals essentially with the relevance of the 1/5 of the members present requirement found in the second sentence of MCLA 46.3a; MSA 5.323(1) to the vote for chairman. This requirement is not applicable to the vote for chairman. MCLA 46.3a; MSA 5.323(1) provides that the requirement shall apply to "other questions or motions", that is to questions or motions not dealt with in the first sentence of the section. It is in the first sentence of MCLA 46.3a; MSA 5.323(1) that the vote for chairman is discussed. Thus the decision to conduct the election for chairman by secret ballot must be made according to the procedures specified in MCLA 46.3; MSA 5.323. This section requires action to be taken by majority vote of the members present, there being a quorum present. Therefore, a majority of the members present at a meeting of the county board of commissioners must vote to have the election for chairman by secret ballot.

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