

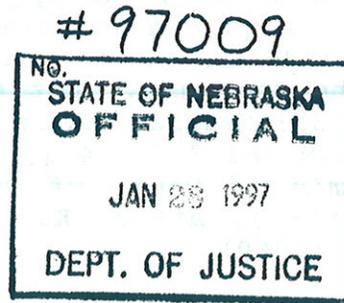


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DATE: January 23, 1997

SUBJECT: Nebraska Investment Council; Quorum to Conduct Business

REQUESTED BY: Rex W. Holsapple, State Investment Officer

WRITTEN BY: Don Stenberg, Attorney General
Fredrick F. Neid, Assistant Attorney General

This is in response to your request for "information or advice on the minimum number of individuals that need to be present at Nebraska Investment Council Meeting to conduct business." You have related that the Investment Council is "operating with three quorum members being present to take action" and the Council questions whether or not this is the proper course of action. Generally, it is our view that the presence of four members is necessary to constitute a quorum for a meeting of the Investment Council.

The Investment Council is established under the provisions of the Nebraska State Funds Investment Act, Neb. Rev. Stat. §§ 72-1237 to 72-1260 (Cum. Supp. 1994 and 1996 Neb. Laws 847) (the "Act"), to establish policies to govern the methods, practices, and procedures followed by the state investment officer for the investment and reinvestment of state funds. See Neb. Rev. Stat. § 72-1239 (Cum. Supp. 1994 and 1996 Neb. Laws 847). There are seven members of the Council including five members appointed by the Governor and two non-voting *ex officio* members, the State Treasurer and the director of the Nebraska Public Employees Retirement Systems. Neb. Rev. Stat. § 72-1237 (Cum. Supp. 1994 and 1996 Neb. Laws 847).

Arterburn
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Timothy J. Texel
John R. Thompson
Barry Waid
Terri M. Weeks
Afonza Whitaker
Melanie J. Whittamore-Mantzios
Linda L. Willard

The provisions of the Act do not specify the number of members required to constitute a quorum nor to conduct business at a meeting of the Council. Thus, it is appropriate to apply the common law rule, that is, a majority of all members of a board or commission shall constitute a quorum and a majority of the quorum, qualified to act, may decide to take action in the absence of statutory provisions to the contrary. *Petition of Kinscherff*, 89 N.M. 669, 556 P.2d 355 (1976); *Federal Trade Commission v. Flothill Products, Inc.*, 389 U.S. 179, 88 S.Ct. 401, 19 L.Ed.2d 398 (1967); *Kaiser v. Real Estate Com'n of Dist. of Columbia*, 155 A.2d 715 (Munic. Ct. App., D.C. (1959)), *aff'd. Kaiser v. Adams*, 108 U.S. App. D.C. 94, 28 F.2d 642 (1960).

In the presence of a quorum of four members, a majority of the voting members present is sufficient to take official action at a meeting of the Council. The number of votes required to take formal action requiring a vote of the members may vary because the membership of the Council includes two non-voting *ex officio* members. *Ex officio* members of a body are counted in determining the presence of a quorum. *Louisville v. Jefferson County Planning & Zoning Com. v. Ogden*, 850 S.W.2d 52 (Ky. App. 1948). The quorum of four members may consist of three combinations of *ex officio* and appointed members since *ex officio* members are included for purposes of determining a quorum.

In the FIRST circumstance, a quorum may consist of two *ex officio* members and two appointed members. A majority of the quorum present to take official action by vote would require the concurrence of the two voting appointed members. A SECOND possible quorum would include one *ex officio* member and three appointed members. A majority of the quorum to take official action would require the concurrence or votes of two appointed members. A THIRD quorum would consist of four appointed members. In this circumstance, three concurring and voting members would constitute a majority of the quorum qualified to act.

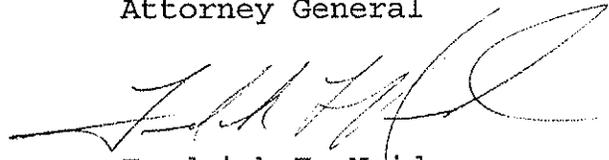
While we have applied the common law rule for determining the presence of a quorum, we point out that a body may establish internal rules for its governance and procedure. For purposes of

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this advisory opinion, we assume that the Investment Council has not established formal rules or policy addressing the presence of a quorum and the number of votes required to take official action at a meeting of the Council.

Sincerely yours,

DON STENBERG
Attorney General



Fredrick F. Neid
Assistant Attorney General

Approved By:



Attorney General

