

RECEIVED

JAN 18 2007

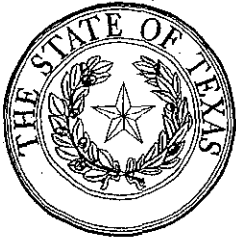
OPINION COMMITTEE

State Board of Education

1701 North Congress Avenue
Austin, Texas 78701-1494
(512) 463-9007

FILE # ML-45102-07
I.D. # 45102

RQ-0561-GA



Geraldine Miller
Chair
Dallas, District 12
Don McLeroy
Vice Chair
Bryan, District 9
Mavis B. Knight
Secretary
Dallas, District 13

Rick Agosto
San Antonio, District 3

Lawrence A. Allen, Jr.
Houston, District 4

Mary Helen Berlanga
Corpus Christi, District 2

David Bradley
Beaumont, District 7

Barbara Cargill
The Woodlands, District 8

Bob Craig
Lubbock, District 15

Cynthia Noland Dunbar
Richmond, District 10

Pat Hardy
Fort Worth, District 11

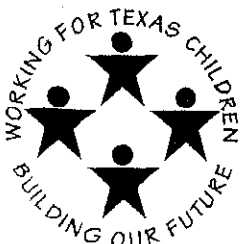
Terri Leo
Spring, District 6

Gail Lowe
Lampasas, District 14

Ken Mercer
San Antonio, District 5

Rene Nuñez
El Paso, District 1

Shirley J. Neeley, Ed.D.
Commissioner of Education
(512) 463-8985



January 10, 2007

Honorable Gregg Abbott
Texas Attorney General
Attn: Opinions Committee
P.O. Box 12548
Austin, Texas 78711-2548

Dear General Abbott:

I am writing to ask your opinion regarding the effect, if any, of Section 311.013, Texas Government Code, on the ability of a governmental body to adopt procedural rules¹.

The State Board of Education (the "Board")² is a fifteen-member elected body which conducts its meetings subject to the Texas Open Meetings Act. Section 7.107(b), Texas Education Code requires the Board to "adopt rules of procedure" following the election of new members. The Board adopts specific operating rules³, and within those rules additionally adopts Robert's Rules of Order Newly Revised ("Robert's") for the conduct of its meetings⁴.

Robert's contains several supermajority requirements intended to protect the rights of a minority or of absent members. Several questions have arisen regarding those supermajority requirements⁵. For example, Robert's requires a two-thirds vote to suspend a procedural rule or limit debate. It has been suggested that requiring a supermajority in procedural rules could conflict with Section 311.013 of the Texas Government Code:

§ 311.013. AUTHORITY AND QUORUM OF PUBLIC BODY.
(a) A grant of authority to three or more persons as a public body

¹ We understand procedural rules to be those described by Subsection 2001.003(6)(C), Texas Government Code, regarding the "internal management or organization of a state agency" and thus not required to be adopted through notice and comment rulemaking under Chapter 2001 of the Government Code.

² See generally, Subchapter D, Chapter 7, Texas Education Code.

³ The Board's current Operating Rules are available at
<http://www.tea.state.tx.us/sboe/oprules/index.html>

⁴ See, Board Operating Rules at Section 2.7.

⁵ The Board is subject to supermajority requirements imposed by statute (Sections 7.102(f) and 21.042, Texas Education Code) and the Texas Constitution (Article VII, Section V, Section 5(a)(1)(A)). This request is of course limited to supermajority requirements imposed only by procedural rules adopted by the board.

confers the authority on a majority of the number of members fixed by statute.

(b) A quorum of a public body is a majority of the number of members fixed by statute.

Alternatively, it has been suggested that Section 311.013 of the Government Code would authorize a public body to suspend any procedural rule—including a supermajority requirement—by a vote of a majority of the members fixed by statute.

In Texas Attorney General's Opinion DM-228 (1993), your office determined that procedural rules adopted by a governmental body must be "consistent with relevant provisions of law". Attorney General's Opinion GA-412 (2006) found Subsection 311.013(b) of the Government Code to be controlling for purposes of computing a quorum of a governmental body and sustained the application of Robert's to approve a measure passed with less than a majority of the members of the body. However, we are unaware of any precedent that applies Subsection 311.013(a) of the Government Code to procedural rules requiring a vote of more than a majority of the members of a governmental body fixed by statute.

My questions are as follows:

1. May a public body, consistent with Section 311.013, Government Code, adopt a procedural rule that requires a vote greater than a majority of the members fixed by statute? Please assume for purposes of this question that no statutory or constitutional provision requires more than a majority vote.
2. If your answer to my first question is "yes", may that body suspend such a procedural rule by a vote of a majority of the members fixed by statute pursuant to Section 311.013, Government Code?

Thank you for your consideration of this request. Should you require any additional information, please contact David Anderson, General Counsel, Texas Education Agency, at (512) 463-9720.

Sincerely,



Geraldine "Tincy" Miller, Chair
State Board of Education