

Vice Chair Election Compliance – OGS Legal Response from Darrin Derosia

Voting requirements

General Construction Law § 41 requires a majority of the Commission's whole number to constitute a quorum, which is necessary to hold a meeting. That statute further requires a majority of the Commission to vote affirmatively in order to pass a motion or resolution (5 affirmative votes). What was less clear is if the Commission can change that requirement to, for example, only require affirmative votes of a majority of the Commissioners present. We believe that since the requirements of the General Construction Law are a NYS statute, that voting requirement could only be overcome with another State statute (or charter law passed pursuant to the Municipal Home Rule Law). So, for example, the legislation creating the Commission could have included a different number of affirmative votes needed. Since it did not, we believe that Commission must have five affirmative votes to pass a motion or resolution.

There is some authority that, only with respect to the Commission electing officers, that less than five votes could elect an officer, such as the vice-chair or secretary, if a method such as a ballot method was used where the Commissioner receiving the most votes could be elected to the position. The case that I am relying on is *Morris, et al. v. Cashmore, et al.*, 253 AD 657 (App Div 1st Dept, 1938); affirmed by the Court of Appeals, 278 NY 730 (1938). That case was about several matters involving the NYC City Council. The relevant holding was "we hold that section 41 of the General Construction Law does not limit the right of the City Council to act by a majority of a quorum in those intracameral matters with which we are concerned." The matter at issue was the election of a vice chairman of the City Council and the court found that a resolution (which requires affirmative vote of a majority of the entire Council) was not required. That an election by balloting, permitting a choice from among several nominees, was normal. So that where a balloting method is used, the member receiving the most votes can be elected if a majority of the Council agrees to that method.