For the purpose of taxation, a single county community mental health and service district does not enjoy status distinct from the county it serves. The board of a single county district is not a taxing authority under the terms of R.C. 5705.01. Tax levies for the use of a single county district require action by the board of county commissioners as the taxing authority for the county. In contrast, R.C. 5705.01(A) specifies that for the purposes of R.C. Chapter 5705, a joint county mental health and retardation service district is a subdivision. Thus, a joint county board is, for the purposes of taxation, an entity independent of the counties which comprise it. R.C. 5705.01(C) specifies the board of a joint county community mental health and retardation district as the taxing authority for the district. R.C. 5705.03 empowers the taxing authority of each subdivision to levy taxes annually for the purpose of meeting current expenses and acquiring or constructing permanent improvements. Under the terms of R.C. 5705.01, a permanent improvement includes land and interests therein. While I am of the opinion that the power to purchase real property for the use of a single county board is reserved to the board of county commissioners, I must conclude that the terms of R.C. 5705.01 and 5705.03 vest the authority to acquire real property for the use of a joint county community mental health and retardation service district in the board of the district.

Therefore, in specific answer to your question, it is my opinion and you are so advised, that a joint county community mental health and retardation board may contract for and acquire by purchase real property in its own name, provided that the acquisition serves a purpose authorized by statute.

OPINION NO. 78-047

Syllabus:

1) A community mental health and retardation board, established pursuant to R.C. 340.02, may not take formal action at a regular or special meeting of the board, if less than a majority of the members of the board are present.

2) A majority of the members of a community health and retardation board constitutes a quorum, provided all members had notice of and an opportunity to be present at the meeting, and an action taken by a majority of the quorum constitutes formal action of the board.

To: Timothy B. Moritz, M.D., Director, Dept. of Mental Health and Mental Retardation, Columbus, Ohio
By: William J. Brown, Attorney General, July 14, 1978

I have before me your request for my opinion regarding the operating procedures of community mental health and retardation boards established pursuant to R.C. Chapter 340. Your specific questions are as follows:

1. May a community health and retardation board take formal action at a regular or special meeting of the board when less than a majority of board members are present at the meeting?

2. May less than a majority of board members of a community mental health and retardation board constitute a quorum for a regular or special meeting?

3. If a majority of board members of a community mental health and retardation bonrd constitutes a quorum for a regular or special meeting, may formal board action occur upon a majority vote of the members constituting the quorum?

Your first two questions may be combined, since a quorum is "such a number of the members of a body as is competent to transact business in the absence of the other members." State ex rel. Cline v. Wilkesville Township, 20 Ohio St. 288, 294 (1870).

Under general principles of common law, if a body has a limited number of members, a majority of this limited number constitutes n quorum, in the absence of a statute or charter or bylaw provision to the contrary, and a mnjority of a quorum is empowered to act for the body. These principles nre aptly illustrated in Federal Trade Commission v. Flotill Products, Inc., 389 U.S. 179, 88 S.Ct. 401, 19 L. Ed. 2d 398 (1967).

The facts precipitating the litigation involved a complaint that Flotill Products had violated §2(C) of the Robinson Patman Act. All five members of the Federal Trade Commission heard oral argument in the case. Two commissioners, however, retired before the Commission rendered its decision. Two of the three participating commissioners concurred that Flotill Products, Inc. had violated §2(C) of the Act. The Court of Appeals for the Ninth Circuit refused to enforce the Commission's eease-and-desist order and held that absent statutory authority to the contrary, three members of a five member commission must concur in order to enter a binding order on behalf of the Commission. The United States Supreme Court reversed the judgment of the court of appeals, stating at 389 U.S. 183 as follows:

> Insofar as the Court of Appeals' holding implies that the proposition stated by it is the common law rule, the court was manifestly in error. The almost universally accepted eommon-law rule is the preeise converse -- that is, in the absence of a contrary statutory provision, a majority of quorum constituted of a simple majority of a collective body is empowered to act for the body.

One of the cases noted by the Supreme Court as illustrative of the common-law rule is State ex rel. Green v. Edmondson, 12 N.P. (n.s.) 577 (Hamilton County Common Pleas, 1912), which held that in absence of a different provision in the statute, a county building commission is governed in the conduct of its business by ordinary methods and parliamentary rules. The court stated at 588 the following general rule:

> The commission consists of seven members, each member having equal power and authority. The commission itself is charged with certain duties involving the exercise of judgment and discretioa by each of its members. The statute does not specifically provide for its necessary organization. The general rule applicable to boards, commissions, and similar bodies and entities of a definite membership therefore applies, unless the statute otherwise specifically provides, to-wit, that a quorum consists of a majority of its members, and that such quorum, due notice having been given of the time and place of the meeting to nll members, can exercise the power of the commission; and further, that a majority of such quorum is the action of the body or commission.

See also, Slavens v. State Board of Real Estate Examiners, 166 Ohio St. 285, 286 (1957)("Where authority hns been conferred upon nn administrative bonrd consisting of three or more members and where at a particular meeting one or more members

of the board are absent, such board, in the absence of statutes to the contrary, may act through a majority of quorum consisting of a majority of the members, providing all members had notice and an opportunity to be present.")

It is, therefore, clear that unless R.C. Chapter 340 provides to the contrary, a quorum of a community mental health and retardation board consists of a simple majority of the board and a majority of a quorum may act for the board, provided all members had notice of and an opportunity to be present at the meeting.

R.C. 340.02, which provides for the creation of a community mental health and retardation board, reads in pertinent part as follows:

> For each community mental health and retardation service district or joint-county district there shall be appointed a mental health and retardation board having not less than nine members, if a single county board, or not less than thirteen members, if a joint-county board, nor more than fifteen members. The chief of the division of mental health, with the approval of the director of mental health and mental retardation, shall appoint one-third of the members of such board, and the board of county commissioners shall appoint the remaining members of the board. In a joint-county district the chief, with the approval of the director, shall appoint one-third of the members of such board, and the county commissioners of each participating county shall appoint the remaining members to the board in as nearly as possible the same proportion as that county's share bears to the total of funds expended from all participating counties for the mental health and retardation services approved by the director.
>
> At least two members of the board shall be practicing physicians, one of whom shall be either a psychiatrist or pediatrician, if possible, and at least one member shall be a probate judge of a participating county or his designee. Members shall be residents of the county or counties and knowledgeable and interested in mental health and mental retardation programs and facilities.

The statute also provides for the term of membership on the board and the procedure for filling vacancies and for removal of members. The statute does not, however, set forth requirements for a quorum or for voting.

R.C. 340.03, which sets forth the duties of the board, also is relevant to the issues you raise. R.C. 340.03(L) set forth below, authorizes a community mental health and retardation board to establish its own operating procedures. Similarly, R.C. 340.03(M), set forth below, authorizes the board to establish such rules as may be necessary to carry out the provisions of R.C. Chapter 340.

> Subject to rules and regulations of the director of mental health and mental retardation, the community mental health and retardation board, with respect to its area of jurisdiction, and except for training center and workshop programs and facilities conducted pursuant to Chapter 5127 of the Revised Code, shall:
>
> . . . .
>
> (L) Establish the operating procedures of the board and submit an annual report of the programs under the jurisdiction of the board, including a fiscal accounting, to the board of county commissioners.

(M) Establish such rules and regulations or standards nnd perform such other duties as may be necessary or proper to carry out Chapter 340 of the Revised Code.

It is, therefore, necessary to determine whether the discretionary power conferred on the bonrd by these sections includes the authority to determine a quorum standard different from the common law rule.

It is a settled rule of statutory construction that the General Assembly will not be presumed to have abrogated a rule of common law unless the language used in a statute clearly expresses such intention. There is no abrogation of the common law by mere implication. State ex rel. Hunt v. Fronizer, 77 Ohio St. 7 (1907); Frantz v. Maher, 106 Ohio App. 465 (1957); State ex rel. Wilson v. Board of Education, 102 Ohio App. 541 (1956). Where the General Assembly has altered the common law quorum and voting requirements, it has done so expressly. See e.g. R.C. 705.15 (A majority of all members of the legislative authority of n municipal corporation constitutes a quorum, but the affirmative vote of a majority nf the members of the legislative authority is necessary to adopt any motion, resolution or ordinance. The rule requiring every ordinance to be read three times may be suspended by a three-fourths vote of all members); R.C. 3319.01 (A local board of education, by a three-fourths vote of its full membership, may employ a person not nominated by the county superintendent as superintendent).

The authority of a community mental health and retardation board to establish operating procedures and such rules ns may be necessary to carry out the provisions of R.C. Chapter 340 does not clearly express n legislative intent to abrognte the common lnw standard for determining a quorum. I must, therefore, conclude that no such abrogation is intended.

Accordingly, it is my opinion nnd you nre so advised that:

1) A community mental health and retardation bonrd, established pursuant to R.C. 340.02, may not take formal action at n regular or special meeting of the bonrd, if less than n majority of the members of the bonrd are present.

2) A majority of the members of a community health and retardation board constitutes n quorum, provided all members had notice of and an opportunity to be present at the meeting, nnd an action taken by a majority of the quorum constitutes formal action of the board.

OPINION NO. 78-048

Syllabus:

1. No person who is a member of nny bonrd of education may be appointed or reappointed to the position of trustee of a technicnl college under R.C. 3357.05.

2. A person who held the positions of trustee of a technical college district and member of a board of education prior to Jnnuary 13, 1978 may, pursuant to R.C. 3357.05, continue to hold both positions, but may not nccept n new term in either position without first resigning from the other.