

ment, within the meaning of Section 3501.17, Revised Code. Hence, we must conclude that although the election statutes providing for the apportionment of the cost of elections in odd-numbered years have been materially changed since the rendition of the 1928 opinion, these changes are not of such a nature as to change the conclusion therein reached.

Accordingly, in specific answer to your inquiry, it is my opinion that a county school district is not a subdivision within the meaning of Section 3501.17, Revised Code, and there is no authority under the provisions of that section for the county auditor to withhold, from any moneys payable to such district in an ensuing tax settlement, an amount designated to meet the expense of conducting an election in the odd-numbered years at which members of the county board of education are elected.

Respectfully,  
WILLIAM SANBE  
Attorney General

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639

ADMINISTRATIVE PROCEDURE—ACTION BY LESS THAN FULL MEMBERSHIP—IF QUORUM IS PRESENT AND ALL MEMBERS HAD NOTICE OF MEETING AND OPPORTUNITY TO BE PRESENT; SUCH BOARD CANNOT ACT THROUGH A MAJORITY OF SUCH QUORUM.

SYLLABUS:

Where authority has been conferred upon an administrative board of four members such board, in the absence of a statute to the contrary, may act in a particular meeting, through a majority of the membership, provided (1) a quorum consisting of a majority of the membership is present, and (2) all members had notice and opportunity to be present; but such a board in such case is without authority to act through a mere majority of such quorum.

Columbus, Ohio, June 14, 1957

Mr. Robert Koch, Chairman  
Board of Liquor Control, Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"The Supreme Court of Ohio, on April 17, 1957, in the case of *Slavens vs. State Board of Real Estate Examiners*, 166 O. S. 285, XXX Ohio Bar. No. 16, held that two members of a three-member board could proceed to hear a case. In view of such decision the question has arisen as to whether or not when a case before our board is heard by only three members a decision on the issues presented in such case can be made by two of the three sitting."

In the per curiam decision in the Slavens case the following language is found:

"Where authority has been conferred upon an administrative board 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 a quorum* consisting of a majority of the members, providing all members had notice and an opportunity to be present. *Merchant v. North*, 10 Ohio St., 251. See *State, ex rel. Cline, v. Trustees of Wilkesville Township*, 20 Ohio St., 288 \* \* \*." (Emphasis added.)

The precise question here presented is whether the words "consisting of a majority of the members" refers to and modifies the term "quorum," or the entire expression "majority of a quorum."

The rule of the last antecedent would indicate that modification of the term "quorum" was intended, and this being so, it would follow that a majority of a quorum could act and that that quorum, in the absence of a statutory provision to the contrary, may consist of a majority of the members.

In the Slavens case it will be noted that the court was concerned with a board of three members which actually acted through a majority of the membership, *i.e.*, by the assent of *all* members of the quorum. It would seem, therefore, that the court's statement of the rule as applicable to boards of *more* than three members, and its reference to a *quorum*, is *obiter dictum*.

Reference to the North case, cited by the court in support of the statement quoted above, provides no support for the view that fewer than a majority of the membership may act for the board, for there four of six judges joined in the action under attack, *i.e.*, a majority of the membership rather than a mere majority of a quorum.

In the Cline case the court was concerned with the action of a board of three members, two of whom joined in the action, so that here, too, a majority of a quorum was actually a majority of the membership.

The court's statement in the Slavens case referring to boards of "three or more members," and to a "majority of a *quorum*," rather strongly suggests a ruling that a majority of the membership constitutes a quorum which is authorized to act for the board, and that action may be taken upon the assent of a majority of that quorum.

Some light is thrown on the matter by the court's citation of the Cline case. In that decision Judge McIlvaine said, page 293:

"Was the action of two trustees in the absence of the other legal and valid?"

"By the rule of the common law, where power or authority is delegated to two or more persons to transact business of a private nature, all interested in the power must concur in its due consideration. But in matters of public concern, though it is necessary for all to be present, *yet the majority will conclude the minority \* \* \**" (Emphasis added.)

The decision in the Cline case actually turned on a statutory provision to the effect that "a majority (of the township trustees) shall be a quorum to do business," and it was not necessary in that case to apply the common law rule referred to above. It is quite evident, however, that the reference to this case in the Slavens decision as supporting the rule therein announced, is indicative of approval of the common law rule, although the rule in the latter case is actually a modification of the common law rule in that notice and opportunity to be present is substituted for actual presence at a meeting.

Because neither the North case nor the Cline case supports the view that a mere majority of a quorum, *i.e.*, a "majority of a majority" of the membership may act for the board, and because the suggestion to that effect in the Slavens case is obviously *obiter dictum*, I am impelled to conclude that what the court actually approved in the latter case is the modified common law rule that in the absence of a controlling statute a majority of the membership may act provided all members have had notice and opportunity to be present at the meeting at which such majority undertakes to act.

In reaching this conclusion I do not consider that I am rejecting a ruling of the Supreme Court but rather that I am bound to heed the oft repeated injunction of the court that the syllabus, or per curiam opinion, of that court must be interpreted with reference to the facts of the case, and cannot be construed as being any broader than the facts of the case warrant. See 14 Ohio Jurisprudence 2d, 683, 684, Section 248; Heater Co. v. Radich, 128 Ohio St., 124. The facts in the Slavens case did not warrant the broad rule which the language used in that decision may be thought to state, and I deem it necessary, therefore, to follow the court's injunction against such broader interpretation.

Accordingly, in specific answer to your inquiry, it is my opinion that where authority has been conferred upon an administrative board of four members such board, in the absence of a statute to the contrary, may act in a particular meeting, through a majority of the membership, provided (1) a quorum consisting of a majority of the membership is present, and (2) all members had notice and opportunity to be present; but such a board in such case is without authority to act through a mere majority of such quorum.

Respectfully,  
WILLIAM SAXBE  
Attorney General

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642.

THE OHIO STATE UNIVERSITY—PAYROLL DEDUCTIONS:

1. AUDITOR OF STATE OR UNIVERSITY OFFICERS; NO AUTHORITY TO DEDUCT FROM AGRICULTURAL EXTENSION SERVICE EMPLOYEES' SALARIES FOR FEDERAL RETIREMENT PURPOSES.
2. AUDITOR OF STATE MAY DEDUCT INSURANCE PREMIUMS FROM SALARIES OF AGRICULTURAL EXTENSION SERVICE EMPLOYEES UNDER §3917.64 RC.

SYLLABUS:

1. There is no authority under the laws of this state whereby the officers of the Ohio State University or the auditor of state, may deduct six and one-half per cent from the base salary of each Agricultural Extension Service employee of the university for federal retirement purposes, and remit such deduction to the United States Treasury.

2. Pursuant to Section 3917.04, Revised Code, the vice president and business manager of the Ohio State University may arrange for the auditor of state to deduct insurance premiums from the salaries of Agricultural Extension Service employees who request such action, and to remit the sums so deducted to the Federal Employees Group Life Insurance Fund.

Columbus, Ohio, June 19, 1957

Hon. Novice G. Fawcett, President  
The Ohio State University  
Columbus, Ohio

Dear Sir:

Your request for my opinion reads as follows:

"On March 14, 1955 the Board of Trustees of The Ohio State University authorized the President to sign a memorandum of understanding between The Ohio State University and The United States Department of Agriculture on cooperative extension work in agriculture and home economics. This abrogates the agreement signed July 22, 1914.

"It is to be noted that in this memorandum of understanding the statement is made that all State and county personnel appointed by the Department as cooperative agents for extension work in agriculture and home economics in the State of Ohio shall be joint representatives of the College of Agriculture of The Ohio State University and The United States Department of Agriculture, unless otherwise expressly provided in the project agreement."

"Employee appointments are made by the Board of Trustees on recommendation of the Director of Agricultural Extension Service, Dean of the College of Agriculture and the President. In general, since the passage of the Smith-Lever Act in 1914, employees of the Extension Service have also received cooperative appointments by the U. S. Department of Agriculture.

"On the basis of the fact that employees of the Agricultural Extension Service have received cooperative appointments certain interpretations have been made by the U. S. Department of Agriculture that these employees are:

- "1. Eligible to use the franking privilege in handling their U. S. Mail in carrying on their official business.
- "2. Eligible to participate in the Federal Group Life Insurance program under the provisions of the Federal Employees