NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION

SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-2384-14T4

RAVINDER S. BHALLA, ESQ.,

Petitioner-Appellant,

v.

LOCAL FINANCE BOARD,

Respondent-Respondent.

Submitted May 23, 2016 – Decided June 22, 2016

Before Judges Lihotz, Fasciale and Nugent.

On appeal from the Local Finance Board, Department of Community Affairs, Agency No. LFB-C10-011.

Mellissa Longo, Corporation Counsel, City of Hoboken, attorney for appellant (Alysia M. Proko, First Assistant Corporation Counsel, on the brief).

Robert Lougy, Acting Attorney General, attorney for respondent (Melissa H. Raksa, Assistant Attorney General, of counsel; Laura Mastriano Console, Deputy Attorney General, on the brief).

PER CURIAM

Petitioner Ravinder Bhalla, Esq., appeals from a December 12, 2014 final agency decision (the decision) by the Local Finance Board of the Department of Community Affairs (the

Board), finding that he violated N.J.S.A. 40A:9-22.5(d), by voting on a resolution in which he held a possible interest.[1]

In 2005, petitioner and Paul Condon, Esq. maintained separate law practices, but shared office space under separate leases. In 2008, the Hoboken City Council retained Condon. Also, in 2008, petitioner and Condon relocated their respective law practices and together the two entered into a lease in which they were jointly and severally liable for all rental obligations.

In 2009, petitioner was elected councilman for the city of Hoboken. In 2010, petitioner voted to adopt resolution 10-275, which extended Condon's legal services contract to represent Hoboken.

After receiving a third-party complaint, the Board undertook an investigation and issued a notice of violation, finding petitioner violated N.J.S.A. 40A:9-22.5(d) because petitioner's joint and several obligations with Condon, under

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[1] N.J.S.A. 40A:9-22.5(d) provides:

> No local government officer or employee shall act in his official capacity in any matter where he, a member of his immediate family, or a business organization in which he has an interest, has a direct or indirect financial or personal involvement that might reasonably be expected to impair his objectivity or independence of judgment.

the lease agreement, constituted "a shared business agreement" and "a direct/indirect financial involvement" that might reasonably be expected to impair his objectivity or independence of judgment. Petitioner sought a hearing, and the matter was transferred to the Office of Administrative Law. An administrative law judge issued an initial decision, concluding petitioner did not violate N.J.S.A. 40A:9-22.5(d).

The Board filed exceptions to the initial decision. Following its review, the decision under review was issued, which concluded petitioner's conduct, of voting on Condon's appointment, violated statutory ethical proscriptions. The resolution passed with four affirmative votes, zero abstentions and zero recusals. There was one Board member absent and three Board vacancies.

On appeal, petitioner challenges the decision as both ultra vires and arbitrary, capricious, or unreasonable. We agree with petitioner's contention the decision was ultra vires because the Board lacked sufficient membership to render a binding decision. As a result, we need not analyze whether the opinion was arbitrary, capricious, or unreasonable.

The Local Government Ethics Law, N.J.S.A. 40A:9-22.1 to -22.25, specifically provides that the Board "shall have jurisdiction to govern and guide the conduct of local government

officers or employees regarding violations of the provisions of this act." N.J.S.A. 40A:9-22.4. The Board consists "of the Director of the Division of Local Government Services as chairman and seven members appointed by the Governor by and with the advice and consent of the Senate." N.J.S.A. 52:27D-18.1. When "render[ing] a decision as to whether the conduct of [an] officer or employee is in conflict with the provisions of [the Local Government Ethics Law, the] decision shall be made by no less than two-thirds of all members of the board. N.J.S.A. 40A:9-22.9.

We recently addressed the statutory-interpretation implications of language referencing "all" members of a board. This discussion informs our analysis in considering whether the statutory language "no less than two-thirds of all members of the board" requires two-thirds of the whole board as prescribed by statute, or its duly-appointed membership at the time in question:

> Under the common law quorum rule, "a majority of all the members of a municipal governing body constitute[s] a quorum; and in the event of a vacancy a quorum consists of a majority of the remaining members." Ross v. Miller, 115 N.J.L. 61-63 (1935); see also Matawan Reg'l Teachers Ass'n v. Matawan-Aberdeen Reg'l Sch. Dist. Bd. of Educ., 223 N.J. Super. 504, 507 (App. Div. 1988) ("At common law, a majority of a public body constitutes a quorum."). In King [v. N.J. Racing Commission, 103 N.J.

412, 418 (1986)], our Supreme Court addressed statutory quorum language mirroring the common law quorum rule, finding:

> [I]t is not relevant whether a member is physically absent, is disqualified because of interest, bias, or prejudice, or other good cause, or voluntarily recuses . . . himself. A member who is disqualified from participating in a particular matter may not be counted in determining the presence of a legal quorum.
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> [Ibid. (emphasis added).]

Thus, under the common law quorum rule, any position left vacant, either by death or recusal due to conflict of interest, is not counted to determine what the legal quorum is.

The common law rule applies absent a "pertinent statute to the contrary." King v. N.J. Racing Comm'n, 205 N.J. Super. 411, 415 (App. Div. 1985), rev'd on other grounds, 103 N.J. 412 (1986). See Hainesport Twp. v. Burlington Cnty. Bd. of Taxation, 25 N.J. Tax 138, 147 (Tax 2009) (discussing statutes requiring a "majority of all the members" as "evidenc[ing] a legislative intent to modify the common law rule"); see also 1991 Formal Op. Att'y Gen. N.J. No. 3 (May 7, 1991) ("Laws which define a quorum as a majority or larger percentage of 'all the members' or of 'the authorized membership,' or words to that effect, must . . . be read as requiring a fixed number of members which remains constant despite any vacancies.").

[N.J. Election Law Enf't. Comm'n v. Divincenzo, ___ N.J. Super. ___, ___ (App. Div. 2016) (slip op. at 16-18).]

Thus, the statutory language here, "no less than two-thirds of all members of the board" requires two thirds of the fixed number of eight statutorily commanded members, namely six. See Ross, supra, 115 N.J.L. at 64 (explaining that "use of the phrase 'a majority of all the members' of the councilmanic body, both in relation to the number constituting a quorum and in prescribing the requisites of valid action, [means] the full membership commanded by the act, and not a reduced body, however occurring"). Because the Board acted with only four voting members present when rendering the decision, the decision is void.

Reversed and remanded. We do not retain jurisdiction.