

GARY K. NELSON, THE ATTORNEY GENERAL  
STATE CAPITOL  
PHOENIX, ARIZONA

August 27, 1970

DEPARTMENT OF LAW LETTER OPINION NO. 70-11-L (R-98)

---

REQUESTED BY: RICHARD O. MCGILL, D.O.  
Secretary-Treasurer  
Arizona Board of Osteopathic  
Examiners in Medicine and Surgery

QUESTION: Where one or more of the five board members have disqualified themselves for bias and prejudice, on good cause shown, from participation in a hearing for licensure, what is the number of the "full board" under A.R.S. § 32-1802, which requires the vote of a majority of the full board for the issuance of a license?

ANSWER: The remaining qualified members constitute the full board.

This question asks the definition of the "full board" of Osteopathic Examiners when one or more board members have disqualified themselves on the ground of actual bias and prejudice, at the applicant's request, from participation in a hearing to determine his qualifications for licensure.

A.R.S. § 32-1802.A provides, in part:

" . . . A majority of the members of the board shall constitute a quorum and a majority vote of a quorum present at any meeting shall govern all actions taken except that licenses shall be issued under this chapter only upon the vote of a majority of the full board."

In your fact situation, two of the five board members disqualified themselves for good cause shown; the remaining three board members participated in the hearing, and then voted two to one to grant the applicant's license to practice.

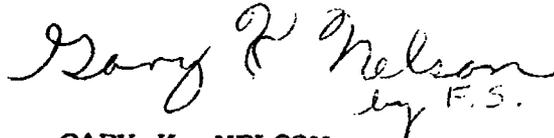
Opinion No. 70-11-L  
(R-96)  
August 27, 1970  
Page Two

It is the opinion of this office that, under these circumstances, the three remaining board members constitute the "full board" under A.R.S. § 32-1802, above quoted. The language of the statute was intended to prevent a mere quorum, where the remaining members are entitled to vote but abstain from voting or are absent, from issuing a license to practice.

Where the board itself is reduced in number by disqualification, death or resignation, the remaining members should be considered the full board. See Alamo Heights v. Gerety, 264 S.W.2d 778 (1954); and also City of Nevada v. Slemmons, 59 N.W.2d 793 (1953); Peterson v. Hoppe, 260 N.W. 215 (1935); Salem v. Wachovia Loan, 55 S.E. 442 (1906).

This is not to be construed as implying that a board member may be disqualified merely upon request or that any disqualification may be had except upon good cause shown.

Respectfully submitted,

 Gary K. Nelson  
by F.S.

GARY K. NELSON  
The Attorney General

GKN:SNC:ell