



**WILLIAM J. SCOTT**  
**ATTORNEY GENERAL**  
**STATE OF ILLINOIS**  
**SPRINGFIELD**

August 20, 1979

FILE NO. S-1452

SPORTS AND GAMING:  
Majority Required For Action  
By The Illinois Racing Board

Charles E. Schmidt, Jr.  
Chairman  
Illinois Racing Board  
Room 1000  
State of Illinois Building  
160 North LaSalle Street  
Chicago, Illinois 60601

Dear Mr. Schmidt:

I have your letter requesting an opinion on the following questions:

1. Does the Illinois Horse Racing Act of 1975 require four Board members to vote in the affirmative before the Board may transact any business or perform any duty or exercise any power?

2. What is the validity of a vote in which three Board members vote in the affirmative, two abstain and two are not present?

Section 14(a) of the Illinois Horse Racing Act of 1975 (Ill. Rev. Stat. 1977, ch. 8, par. 37-14) provides

Charles E. Schmidt, Jr. - 2.

in pertinent part:

"

\* \* \*

\* \* \* A majority of the members of the Board shall constitute a quorum for the transaction of any business, for the performance of any duty, or for the exercise of any power which this Act requires the Board members to transact, perform or exercise en banc, except that upon order of the Board one of the Board members may conduct the hearing provided in Section 16.

\* \* \* The record made at the hearing shall be reviewed by the Board, or a majority thereof, and the findings and decision of the majority of the Board shall constitute the order of the Board in such case.

\* \* \*

"

In response to your first question, in opinion No. S-1123, issued July 9, 1976, I advised the Director of Local Government Affairs that for the purposes of a board of town auditors, when a quorum of that board is present, valid action may be taken by an affirmative vote of a majority of the quorum. Because of the absence of any quorum provisions in article XIII of "AN ACT to revise the law in relation to township organization" (Ill. Rev. Stat. 1977, ch. 39, par. 117), I based my opinion on the common law principle that:

"In the absence of a statute to the contrary, any action by a board requires that a quorum participate therein, and that a majority of the quorum concur. [Citations omitted.]"  
(People ex rel. Compton v. Penn (1976), 33 Ill. App. 3d 372.)

Charles E. Schmidt, Jr. - 3.

In Compton the court applied the rule to mean that where a quorum is present, the vote of the majority of those present is controlling.

This rule is applicable to section 14(a) of the Illinois Horse Racing Act of 1975, which specifies that a majority of the members of the Racing Board shall constitute a quorum, but is silent as to the number of Racing Board members required to take action in the form of a vote, except in the specific situation where one Board member conducts a hearing under section 16 of the Act relating to the revocation or suspension of an occupation license.

I am aware that in opinion No. NP-1198, issued January 13, 1977, I advised the Executive Director of the Illinois Dangerous Drug Commission that a quorum is necessary to approve each decision of the Commission. There, however, my opinion was based on the fifth paragraph of section 120.4-1 of the Dangerous Drugs Abuse Act (Ill. Rev. Stat. 1977, ch. 91½, par. 120.4-1) which specifically provides that: "Every finding, order or decision approved by a majority of the members of the Commission shall be deemed to be a finding, order or decision of the Commission".

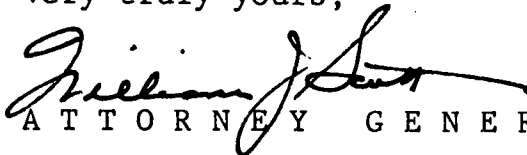
It is therefore my opinion that where a quorum of the Racing Board is present, the vote of a majority of those

Charles E. Schmidt, Jr. - 4.

members present is required for the Board to take action. It would follow that when five members of the Board are present and three vote in favor of a motion, the motion is carried.

In response to your second question, so long as a quorum of the Racing Board is present, the number of votes needed for a majority is based on the number of members present, and not on the number of members actually voting. (Launtz v. People ex rel. Sullivan (1885), 113 Ill. 137.) Therefore, it is my opinion that if five members of the Racing Board are present, three vote in the affirmative and two abstain, the motion is carried.

Very truly yours,

  
ATTORNEY GENERAL