Vote by town commission required to adopt resolution

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Subject:
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MUNICIPALITIES--VOTE REQUIRED BY TOWN COMMISSION TO ADOPT RESOLUTION

To: Allan V. Everard, Town Attorney, Palm Beach Shores

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QUESTION:

Is a resolution adopted when two members vote in favor of the resolution, one votes against, and one abstains, when only four members of a five-member town commission are present at a meeting?

SUMMARY:

Under s. 166.041(4), F. S., where only four members of a five-member town commission are present at a meeting of such body, the adoption of a resolution requires the affirmative vote of at least three members, irrespective of the fact that one of the members present abstained from voting.

The Municipal Home Rule Powers Act, Ch. 73-129, Laws of Florida, enacted a new Ch. 166, F. S., which includes specific provisions respecting the adoption of resolutions by the governing bodies of municipalities. Section 166.041(1)(b), F. S., now defines a "resolution" as

". . . an expression of a governing body concerning matters of administration, expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body."

Section 166.041(4), F. S., provides:

"(4) A majority of the members of the governing body shall constitute a quorum. An affirmative vote of a majority of a quorum present shall be necessary to . . . adopt any resolution . . . . On final passage, the vote of each member of the governing body voting shall be entered on the official record of the meeting. All ordinances or resolutions passed by the governing body shall become effective ten days after passage or as otherwise provided therein."

Section 166.041(6), F. S., provides that the foregoing "shall constitute a uniform method for the adoption and enactment of municipal ordinances and resolutions" and, although municipalities may specify additional requirements, "a municipality shall not have the power or authority to

lessen or reduce the requirements of this section [s. 166.041, F. S.] . . . ."

It is clear from the foregoing that, in order to adopt a resolution, a quorum must be present and a majority of those present must vote in favor of the resolution. Accordingly, when four members of a five-member town council are present, the adoption of a resolution requires the affirmative vote of at least three members. The fact that one member abstained from voting has no effect on the statutory provision that the adoption of a resolution requires the affirmative vote of a majority of the members present. In this respect it should also be noted that s. 286.012, F. S., with exceptions not here relevant, prohibits abstention from voting on such matters. *Also see* AGO 072-229 holding that s. 286.012, F. S., does not permit a vote of "pass." On the basis of the foregoing I am of the view that a resolution is not adopted when only two of the four members present voted in the affirmative, irrespective of the fact that one member abstained from voting.