

Attorney General Issues Opinion on Supermajority Vote for Budget Increase

The vote for an additional one percent of budget authority requires the affirmative vote of 75 percent of the members of the governing body that constitute a quorum according to an Attorney General's opinion issued on December 28.

The opinion was requested by State Auditor Charlie Janssen in response to a 5-to-1 vote by the seven-member Lincoln City Council to increase the lid. Under Neb.Rev.Stat. §13-519(1)(a), governmental units may exceed the one percent limitation "upon the affirmative vote of at least seventy-five percent of the governing body." The question presented was whether the number of votes needed for a supermajority was based on the entire elected body or only those members present for the required vote.

The opinion first examined the definition of "governing body" under the budget language. For counties, it is clear that the governing body of the county is the county board.

The second part of the analysis examined historical treatises and case law back to 1888 and focused on the language used by the Legislature in writing the statutes. There is a legal presumption that the Legislature's intent is derived through the omission of words from statute as well as the inclusion of words in statute. Phrases such as "the members of", "a majority of all members", and "the whole number of members elected to the council", were determined to have very specific meanings in calculating the number of votes needed. For example, under common law, a majority of the membership of a body constitutes a quorum for the transaction of business unless the legislature has provided a different rule.

The opinion compared usages of phrases in statute such as "all of the members" and "the whole of the members" to "the governing body" in §13-319. It presumed that the Legislature was aware of the effect of the language used in §13-519 compared to the phrases used elsewhere in statute. It concluded that "the additional one percent budget authority allowed under §13-519(2) requires the affirmative vote of 75 percent of the members of the governing body constituting a quorum authorized to conduct business, and not seventy-five percent of the entire membership of the governing body."

The complete text of the opinion is available [here](#).

In 2005, the Attorney General issued an opinion on related issues, including the numbers of votes needed in the event of an abstention or recusal. The complete text of that opinion is [here](#).