

LETTER OPINION
93-L-30

February 5, 1993

Mr. Thomas W. Robb
Sioux County State's Attorney
P.O. Box 2101
Bismarck, ND 58502-2102

Dear Mr. Robb:

This letter is in response to former Sioux County State's Attorney Maury Thompson's December 30, 1992, letter requesting an opinion on two procedural issues.

He asked whether the chairman of a county commission may second a motion if the motion will not be seconded by another commission member. He also asked whether the chairman of the county commission may vote on a motion to break a tie vote.

This office has concluded previously that the chair of the county commission "enjoys the same authority the other county commissioners possess," and, therefore, the chair may vote on matters which come before the board. Letter from Attorney General Robert Wefald to Richard L. Schnell, Morton County State's Attorney (February 29, 1984). Based on that analysis, the chair also may make and second motions just as the other county commissioners may. I have attached a copy of that opinion for your review.

In response to the questions regarding Robert's Rules of Order, this office has concluded that "if a public body has not adopted rules of procedure and no statutory rules of procedure are applicable, then generally accepted rules of parliamentary procedure govern." Letter to Senator Corliss Mushik (April 25, 1990) (citing McCormick v. Bd. of Ed. of Hobbs Muni. School Dist. No. 16, 55 N.M. 648, 274 P.2d 299, 307-08 (N.M. 1954)).

Therefore, it is my recommendation that the board of county commissioners adopt some form of rules to control the manner of the conduct of business. Robert's Rules of Order is but one possibility. In doing so the commission may wish to modify those rules

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to its own liking and to allow for unique issues which will arise due to the commission's size. In that light I refer you to In Re 1989 Street Improvement Program v. Denmark Township, Washington County, Minnesota, 483 N.W.2d 508 (Minn. App. 1992).

In the Denmark Township case, the court refused to apply a literal interpretation of a statute requiring a four-fifths majority of a five-member board because "the court may presume that '[t]he legislature does not intend a result that is absurd, impossible of execution, or unreasonable.'" Citing Minn. Stat. ? 645.17 (1990). Likewise, the board of county commissioners should consider adopting rules which will allow it to function efficiently. Among the rules the county commission should include would be a rule authorizing the chairman to second a motion when the two remaining members of the commission are at loggerheads.

Sincerely,

Heidi Heitkamp
ATTORNEY GENERAL

rms/pg
cc: Sioux County Commissioners
Maury C. Thompson

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