

TO BE PUBLISHED IN THE OFFICIAL REPORTS

OFFICE OF THE ATTORNEY GENERAL
State of California

JOHN K. VAN DE KAMP
Attorney General

OPINION	:	No. 84-1001
	:	
of	:	<u>DECEMBER 4, 1984</u>
	:	
JOHN K. VAN DE KAMP	:	
Attorney General	:	
	:	
CLAYTON P. ROCHE	:	
Deputy Attorney General	:	
	:	

THE HONORABLE DENNIS A. BARLOW, COUNTY COUNSEL,
YUBA COUNTY, has requested an opinion on the following question:

May a majority of a quorum of the board of supervisors, while acting as the county board of equalization, act upon a matter if such majority is less than a majority of the full board?

CONCLUSION

A majority of a quorum of the board of supervisors, while acting as the county board of equalization, may act upon a matter even if such majority is less than a majority of the full board.

ANALYSIS

The State Board of Equalization is established by article XIII, section 17 of the California Constitution. Article XIII, section 16 provides that "[t]he county board of supervisors, or one or more assessment appeals boards created by the county board of supervisors, shall constitute the county board of equalization for a county. It further provides that "the county board of equalization . . . shall equalize the values of all property on the local assessment roll by adjusting individual assessments."

Section 15606 of the Government Code, which provides the powers and duties of the State Board of Equalization, provides in subdivision (c) that the state board shall "[p]rescribe rules and regulations to govern local boards of equalization when equalizing."

Pursuant to this duty, the state board has adopted, inter alia, Rule 311, with respect to "Quorum And Vote Required" of local boards.¹ As amended July 27, 1982, effective February 10, 1983, Rule 311 provides:

"No hearing before the board shall be held unless a quorum consisting of a majority of the board is present. Except as otherwise provided in section 310, *no decision, determination or order shall be made by the board by less than a majority vote of all the members of the board who have been in attendance throughout the hearing.* A hearing must be held before the full board if either party so demands. If a hearing takes place before a board consisting of an even number of members and they are unable to reach a majority decision, the application shall be reheard before the full board. In any case wherein the hearing takes place before less than the full board, the parties may stipulate that the absent member or members may read or otherwise familiarize himself or themselves with the record and participate in the vote on the decision." (Emphasis added.)

The focus of this opinion request is upon the underscored provisions of the second sentence of Rule 311. We are advised that the State Board of Equalization amended Rule 311 in 1983 to permit a majority of a quorum of a local board to take action; that this was to change the prior rule which required in all cases an affirmative vote of a majority of the full board even when the full board was not present.

Despite this advisement as to the purpose for and meaning of the 1983 amendment, it has been suggested that the language of Rule 311 still requires a vote of a

¹ See California Administrative Code, Title 18, section 311.

majority of the full board *in all cases*. This suggestion arises by virtue of case law decided some time ago to the effect that since the constitution and statutes impose the duty upon a local board to act, no less than a majority of the whole board (who have heard the evidence) may act upon a matter. (See *Universal Cons. Oil Co. v. Byram* (1944) 25 Cal.2d 353, 360; *Bandini Estate Co. v. Los Angeles* (1938) 28 Cal.App.2d 224, 229-230. See also 54 Ops.Cal.Atty.Gen. 154, 155-156 (1971).)

In a general law county, a board of supervisors consists of five members. (Gov. Code, § 25000.) Accordingly, if we assume that only three members are present at a particular assessment hearing, the issue is whether the language "a majority vote of all the members of the board who have been in attendance throughout the hearing" in Rule 311 mandates a vote of two members, or mandates a vote of three members to take action. In essence is the final clause "who have been in attendance throughout the hearing" descriptive of a majority vote of the quorum (two out of three members), or is it descriptive of a majority vote of the *full board*, (three out of three members) all of whom "have been in attendance throughout the hearing"?

In our view the first construction is the more natural one from the language of the second sentence of Rule 311. We, however, admit that the latter construction is not an impossible one, although in our view a strained one. The latter construction would be more palatable if the final clause were set off by a comma, thus reading "by less than a majority vote of all the members of the board, who have been in attendance throughout the hearing. Stated otherwise, the latter construction is strained because it essentially does not give the final clause the function of modifying the prior language of the sentence, but gives the final clause the role of modifying the composition of the quorum, *which is found in the first sentence*, ("the majority of the board.")

"Generally, the same rules of construction that apply to statutes govern the interpretation of rules and regulations of administrative bodies." (*Forrest v. Trustees of Cal. State University & Colleges* (1984) 160 Cal.App.3d 357, 362. Likewise, although the ultimate interpretation of such regulations is a question of law, "an administrative agency's interpretation of its own regulation obviously deserves great weight." (*Id.*, at p. 363.)

We have already alluded to the administrative construction of the statute, which is entitled to great weight. We also had alluded to the administrative purpose of the 1983 amendment. We are informed that such purpose was *to change* the state board's prior rule as to the number of votes needed to sustain local board action. It also can be "correctly presumed that the change in . . . language was intended to produce a change in result". (*Judson Steel Corp. v. Workers' Comp. Appeals Bd.* (1978) 22 Cal.3d 658, 666, fn. 6.)

An examination of Rule 311 as it read immediately preceding its amendment in 1983 is both instructive and compelling that the state board's construction of its own regulation is proper. Rule 311 provided:

"311. Quorum and Vote Required. No hearing before the board shall be held unless a quorum consisting of a majority of the board is present. *Except as otherwise provided in section 310, no determination or order shall be made by the board by less than a majority vote of all the members of the board. Only those members who have been in attendance throughout the hearing may vote on the decision.* If a hearing takes place before a board consisting of an even number of members and they are unable to reach a majority decision, the application shall be reheard before the full board. In any case wherein the hearing takes place before less than the full board, the parties may stipulate that the absent member or members may read or otherwise familiarize himself or themselves with the record and participate in the vote on the decision." (Emphasis added.)

It is thus seen that the second sentence of *prior* Rule 311 provided for a "majority vote of all the members of the board" without qualification for local board action. It would thus appear that the addition of the clause "who have been in attendance throughout the hearing" to such wording was intended to change the rule in that respect. The addition of the clause at that point also serves a dual function. It precludes the necessity of repeating the third sentence of prior Rule 311, which essentially had codified the rule of the "*Morgan cases*" that "he who decides must hear." (*Morgan v. United States*, 298 U.S. 468 and 304 U.S.1.) In short, had the state board desired to continue the practice of requiring a majority vote of the full board, no change in the language would have been necessary. The underscored sentences could have remained as they were.

We also note the addition in 1983 of the new sentence that "[a] hearing must be held before the full board if either party demands." This additional language is consistent with the construction of the rule by state board. This sentence essentially recognizes that if a property owner agrees to hearing before less than a full board, he is, under the new rules, waiving his right to a *decision* by a majority of the full board; ergo, his right to insist upon a hearing by the full board has also been added. Stated otherwise, if a majority vote of the full board were still required under Rule 311 as amended in 1983, there would appear to be no need for this new sentence.²

² We also note that if three votes out of three were still required (with a quorum of three present), it is highly unlikely that a property owner would waive his right to a hearing before the full board.

For the foregoing reasons, we conclude that a majority of a quorum of the board of supervisors, while acting as the county board of equalization, may act upon a matter even if such a majority of a quorum is less than a majority of the full board.
