



SENATE OPERATIONS WHEN “EQUALLY DIVIDED”

1. IS THERE A PROCEDURE FOR OPERATING WHEN A VOTE RESULTS IN THE SENATE BEING EQUALLY DIVIDED?

Yes, the Framers of the Delaware Constitution provided for such a situation in Article III, § 19 of the Constitution by giving the Lieutenant Governor a power called “the casting vote.”¹

2. WHAT DOES “EQUALLY DIVIDED” MEAN?

Mason’s states that a tie vote occurs “when the vote for and the vote against any proposition are equal.”² *Mason’s* notes that “[a] casting vote is in order only when there is a tie vote, as . . . when there is an equal number for and against a proposition.”³

3. IF A MEMBER IS PRESENT BUT NOT VOTING, DOES THAT RESULT IN THE VOTE BEING EQUALLY DIVIDED?

No. *Mason’s* makes clear that “[m]embers present but not voting are disregarded in determining whether an action carried.”⁴ As *Mason’s* notes, “It would not seem to be correct to say that members not voting are presumed to be voting in the negative, although in this situation that is the effect of the failure to vote.”⁵

Mason’s idea that one cannot presume that members “not voting” are voting “no” finds support in Delaware case law. In *Smith v. Sussex County*, 632 A.2d 1387 (Del. Ch. 1993), the Court of Chancery interpreted a statutory provision on the vote required to pass legislation by Sussex County Council, which is similar to the language in the Article II, § 10 of Delaware Constitution requiring “the concurrence of a majority of all the members elected to each House” to pass bills and joint resolutions.⁶ The Court concluded that when a member of Sussex County Council is present but not voting, that member’s vote does not provide an affirmative vote for passage of legislation.⁷ In reaching this conclusion, the Court

¹ Del. Const. art. III, § 19 (“[The Lieutenant Governor] shall be President of the Senate, but shall have no vote unless the Senate be equally divided.”).

² *Mason’s* at Sec. 513(1), p. 347.

³ *Id.* at Sec. 514(1), p. 349.

⁴ *Id.* at Sec. 510(1), p. 341.

⁵ *Id.* at Sec. 515(b), p. 351.

⁶ *Smith v. Sussex County*, 632 A.2d 1387, 1388 (Del. Ch. 1993).

⁷ *Id.* at 1389.

took a formalistic view of voting, stating, “Whether he or she concurs in action is determined by his or her vote. If a member votes for an ordinance he or she concurs in its enactment. If she does not vote for it, that member cannot, in my opinion, be said to have concurred in it in the formal way that legislative law creation requires.”⁸

Therefore, it is clear that the act of voting is an affirmative act, “yea” or “nay”. So, a member who is present and not voting on a vote where there are 10 yeas and 9 nays denies the potential majority both an affirmative vote for passage and a negative vote that would produce a Senate that is equally divided for purposes of triggering the Lieutenant Governor’s casting vote. In such a circumstance, the Lieutenant Governor may not exercise the casting vote and, without 11 affirmative votes the desired legislative action may not be taken.

4. ON WHAT ISSUES MAY THE LIEUTENANT GOVERNOR VOTE WHEN THE SENATE IS EQUALLY DIVIDED?

In 1966, Governor Charles Terry requested of our Supreme Court an opinion on the nature and extent of the casting vote.⁹ Specifically, Governor Terry asked: (1) whether the Lieutenant Governor is a member of the Senate for purposes of quorum and (2) on what legislative matters a Lieutenant Governor may exercise the casting vote.¹⁰

The Supreme Court answered question number 2 by stating:

Implicit in Article III, § 19, we think, is the unqualified power of the Lieutenant Governor to vote on any question, large or small, whenever the Senate is equally divided. This conclusion maintains the underlying principle of the ‘majority of members’ provisions: the expression of the will of the majority of the people of the State.¹¹

Therefore, based on the Supreme Court’s opinion, the Lieutenant Governor’s casting vote may be used on all of the following:

- Senate and House Bills.
- Senate and House Joint Resolutions.
- Senate and House Concurrent Resolutions.
- Senate Resolutions.
- Senate motions of a procedural nature.
- Confirmation of gubernatorial appointments.¹²

⁸ *Id.*

⁹ *Opinion of the Justices*, 225 A.2d 481, 482 (Del. 1966).

¹⁰ *Id.*

¹¹ *Id.* at 485.

¹² *Id.*