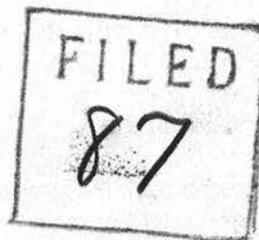


CORPORATIONS: (1) At common law, no right to vote by  
PROXIES: proxy at a corporate election; (2) Proxy  
COUNTY HEALTH CENTERS: voting may be permitted by bylaws.

June 30, 1949

SPECIAL DELIVERY

Hon. Homer L. Swenson  
Prosecuting Attorney  
Wright County  
Mountain Grove, Missouri



Dear Sir:

This is in reply to your request for an opinion, which is as follows:

"The Wright County Health Center, Inc., has been organized in this County by virtue of a pro-forma decree of the Circuit Court and has been issued a charter by the Secretary of State. The corporation has not had a regular meeting for the purpose of organization, election of officers and adoption of by-laws and other necessary steps to perfect the corporate organization.

"A controversy has arisen over the question of the members casting votes by proxy. The following questions have been propounded to me:

"(1) May the members of this corporation cast their votes by proxy?

"(2) If so, do the members, by a majority vote, have the right to prohibit the casting of votes by proxy?

"(3) If the members do have the right to prohibit proxy voting may proxy votes be voted on the motion submitted to so prohibit proxy voting?"

As we understand the background for your request, the Wright County Health Center, Inc., has not as yet had an organizational meeting and taken the necessary steps to perfect the corporate organization. The primary question for consideration is whether or not proxy voting should be allowed on the first motions to be voted on at the organizational meeting. As we understand the facts, there is nothing in the corporate charter either allowing proxy voting or prohibiting proxy voting.

The Wright County Health Center, Inc., came into existence in order to comply with the provisions of a statute enacted by the 63rd General Assembly, Section 4 of which reads, in part, as follows (Laws of Mo. 1945, page 970):

"The location, building, maintenance and operation of said public county health center shall be vested in a bona fide organization of at least two hundred and fifty resident members, paying annual dues each of at least one dollar, be a corporate body, constitution and by-laws legally adopted, and its officers legally elected and qualified, and when so formed, shall be the legal and official body in the county or counties for the promotion of health activities in said county or counties. \* \* \*"

The actual incorporation of the county health center was accomplished under Article 10, Chapter 33, Laws of Missouri, 1939, which provides for the incorporation of associations formed for benevolent, religious, scientific, fraternal-beneficial, or educational purposes. There is nothing in Article 10 either prohibiting or allowing proxy voting.

The common-law rule is set out in 14 C. J., at page 907, as follows:

"At common law there is no right to vote by proxy at a corporate election, but every vote must be personally given. To authorize a vote of this character it must be conferred by statute, charter or by-law. \* \* \*"

One of the earliest and leading cases on the common-law rule of voting by proxy is that of *Taylor v. Griswold*, 14 N. J. 222. In discussing the common-law rule, the Supreme Court of New Jersey said, l.c. 226:

"1st. The first inquiry then is, whether, upon general and common law principles, the members of any corporation have a right, as a matter of course, to be represented, and to vote by proxy? This question must be answered in the negative. It is clear, that when the charter is silent, and no by-laws have yet been passed, regulating the mode of election, and of voting upon other questions that may arise in conducting the ordinary and appropriate business of the corporation, the corporators, when lawfully assembled, must be governed by the same rules and principles that prevail in all primary assemblies. That is, until a different rule has been established by some competent authority, every question must be decided, and every election determined by the majority; or in other words, by the major part numerically, of those who are personally present, and voting. To illustrate my meaning, let it be supposed, that the charter expressly authorizes the company to determine whether the members of it, shall be permitted to vote by proxy or not: At the very first meeting of the company, the question is proposed, How shall members vote on this question? In person or by proxy? Certainly not by proxy: for that would be to admit proxies before there is any law to authorize their admission. This primary vote must then be given and determined by the majority of the corporators present and voting in person. Angell and Ames on Corporations, 67; Rex v. Foxcroft, 2 Burr. R. 1017; 2 Kent's Com. 1st Ed. 236; Phillips v. Wickham, 1 Paige's C. R. 598. And to these authorities may be added, The State v. Tudor, 5 Day's Rep. 329; for the court in that case, fully admit the general rule as above stated."

Again, in the early case of *Commonwealth v. Bringhurst*, 103 Penn. 134, the court was considering a case wherein the principal question was the right of the stockholders to vote by proxy in the annual election of officers of the corporation. Neither the charter nor bylaws authorized the stockholders to so vote. In its opinion the court said, i.c. 138:

"That a right to vote by proxy is not a common law right, and therefore not necessarily incident to the shareholders in a corporation appears to have been recognized in *Brown v. Commonwealth*, 3 Grant 209, and in *Craig v. First Presbyterian Church*, 7 Norris 42.

"The selection of officers to manage the affairs of this corporation required the exercise of judgment and discretion. They must be elected by ballot. The fact that it is a business corporation in no wise dispenses with the obligation of all the members to assemble together, unless otherwise provided, for the exercise of a right to participate in the election of their officers. Although it be designated as a private corporation, yet it acquired its rights from legislative power, and it must transact its business in subordination to that power. As then the relators cannot point to any language in the charter expressly giving a right to vote by proxy, and it is not authorized by any by-law, they have no foundation on which to rest their claim. \* \* \*"

The case of *Pohle v. Rhode Island Food Dealers Ass'n, Inc.*, 7 Atl. (2d) 267, was one wherein facts were very similar to the facts in the case under discussion in this opinion. The respondent corporation had organized as a nonbusiness corporation in July, 1937. At its first annual meeting on July 12, 1938, two groups for candidates for various offices were nominated, the first being composed of the complainants and the other composed of members who were then and at the time of the decision holding the offices. At the meeting votes by proxy were offered solely on behalf of the incumbent officers, and the presiding officer ruled that voting by proxy was valid and would be allowed. Thereupon, by counting such proxy votes for the incumbent group,

they were declared elected. The court considered several sections of the Laws of Rhode Island which conferred the authority upon corporations to make bylaws to determine the manner of electing its officers and directors and "the mode of voting by proxy," etc. Other sections of the Rhode Island statutes provided generally that bylaws of corporations might permit voting by proxy. The court ruled that the mere authorization to place such provisions in the bylaws was not tantamount to statutory authorization for proxy voting in the absence of a showing that the bylaws or articles of association did in fact permit proxy voting. In its decision the court relied upon the common-law rule that voting by proxy at corporate elections was not permissible.

So, in the case before us, we believe that voting by proxy should not be allowed at the organizational meeting and thereafter unless the bylaws adopted at such meeting so state.

The authority for the adoption of bylaws by the corporation may be found in the act providing for county health centers (quoted above) and also by virtue of the authority granted to these corporations by Section 5446, R. S. Mo. 1939, which reads as follows:

"Every corporation created under this article shall make by-laws for its government and support and the management of its property, and therein provide, unless such provision is already made in its charter, for the admission of new members and how they shall be admitted, and prescribe their qualifications. Provision may also be made in such by-laws for the removal of officers for cause, and for the expulsion of members guilty of any offense which affects the interests or good government of the corporation, or is indictable by the laws of the land: Provided, always, that such by-laws shall be conformable to the charter of such corporation, and shall not impair or limit any provision thereof or enlarge its scope, and shall not be contrary to the provisions of the Constitution or laws of this state."

It is the opinion of the majority of the authorities in this country that the right to vote by proxy may be conferred by a

bylaw of the corporation. The subject of corporate proxies is rather extensively covered in 41 Mich. Law Rev., page 38, ff. In that article the author reviews the law of corporate proxies and concludes generally that the rule for proxy voting may be permitted by the bylaws of a corporation.

In the early case of *People v. Crossley*, 69 Ill. 195, the court was considering a case involving an association organized under an act for the incorporation of benevolent, etc., societies. The constitution "(or by-laws)" of the corporation provided for voting by proxy upon all questions before the society. The court upheld the validity of such a bylaw, quoting a constitutional provision of the State of Illinois providing for votes by proxies in elections for directors or managers of incorporated companies. The court considered this provision as a constitutional expression in favor of a policy of voting by proxy in private corporations and applied this policy in upholding the validity of a bylaw providing for proxy voting in a benevolent corporation. The court held that the bylaw in question was consistent with the Constitution and Laws of the State of Illinois.

In the Constitution of Missouri, 1945, there is a similar provision, Article XI, Section 6, which provides for a method of voting for directors or managers of corporations, "either in person or by proxy." We believe that the Missouri courts would follow the Illinois Supreme Court's reasoning and consider this provision as a constitutional expression in favor of proxy voting. The Illinois court expressed doubt as to its direct application to benevolent corporations, and we think this would be the Missouri rule. Therefore, it would seem that if the by-laws of a corporation so state, voting by proxy may be permitted on questions before the members of the corporation.

Since the Wright County Health Center is a newly formed corporation and has no custom or usage, we have not discussed the rule concerning the effect of custom or usage on proxy voting.

#### Conclusion.

Therefore, it is the opinion of this department that:

(1) On the original proposition to permit voting by proxy, only the vote of those members present may be considered.

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(2) The members present may adopt a bylaw permitting vote by proxy.

(3) If the members present do not adopt such a bylaw, proxy voting is not permitted.

Respectfully submitted,

JOHN R. BATY  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

JRB:ml