

OPINION 24

OFFICIAL OPINION NO. 24

September 3, 1974

Honorable Otis R. Bowen, M.D.
Governor of Indiana
206 State House
Indianapolis, Indiana 46204
and

Honorable John R. Larson
Indiana State Representative
353 Meadow Lane
Valparaiso, Indiana 46383

Dear Governor Bowen and Representative Larson:

This letter is in response to the same question asked by both of you recently with respect to the requisite number of affirmative votes required for local action by local boards of the Alcoholic Beverage Commission under the Indiana Code of 1971.

ANALYSIS

The Indiana Code of 1971, Section 7.1-2-4-16 provides as follows:

“Quorum and Voting. Three (3) members of a local board shall constitute a quorum for the transaction of business. A local board *may take action only upon the affirmative votes of at least three (3) of its members.*” (My emphasis.)

This recodification also included a “savings clause,” (Section 4(a) of the Acts of 1973, Public Law Number 55, Page 437), which reflected the Legislature’s intent that it be a clarification or restatement of the existing law. This “savings clause” provides as follows:

“Section 4. (a) The provisions of this act are intended to be a codification and restatement of applicable or corresponding provisions of laws repealed by this act. The substantive operation and effect of any law

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repealed by this act shall continue without interruption if that law was re-enacted, in the same or restated form, by this act. . . .”

The original statement of the prior law (Indiana Code of 1971, Section 7-1-1-5) had read as follows:

“ . . . Three (3) members of each local board shall constitute a quorum for the transaction of business. A vote of at least three (3) members of such local board shall be necessary for any action of that local board. . . .”

Thus the 1973 session of the Indiana General Assembly enacted a recodification of the alcoholic beverage law to clarify or make more specific that which was the original legislative intent in this respect, i.e., that a local board of the Alcoholic Beverage Commission could “take action only upon the affirmative votes of at least three (3) of its members.”

CONCLUSION

It is, therefore, my Official Opinion that the recodification of the 1973 Indiana General Assembly did not substantively change the provisions of Section 7-1-1-5 of the Indiana Code of 1971, but rather acted to clarify that which had always been the original intent of the Legislature. Pursuant to this statute, it is apparent that a local board of the Alcoholic Beverage Commission can take official action only in those situations where there are three (3) affirmative votes; for example, a vote of three to zero, a vote of three to one, or a vote of four to zero.