



April 13, 2018

Trial Court of the Osage Nation  
FILED

Apr 16 2018

BY

**OPINIONS OF THE ATTORNEY GENERAL  
OF THE OSAGE NATION  
ONAG-2018-01  
(Slip Opinion)<sup>1</sup>**

**QUESTIONS SUBMITTED BY:** The Honorable Angela Pratt, Speaker of the Osage Nation Congress.

This Office has received your request for an Official Attorney General Opinion regarding board member recusal.

To which you ask:

**In the absence of law or policy on the issue, how does a board obtain sufficient members to conduct business when the majority of the board has recused?**

**I. SHORT ANSWER**

If a majority of the board recuses,<sup>2</sup> and there is no law or policy on the issue, then law or policy must be created which crafts a solution, or the board cannot conduct business without a majority, as there is no quorum.

<sup>1</sup> NOTICE: This opinion is subject to formal revision before official publication. Readers are requested to notify the Office of the Attorney General using the header information, or at [AttorneyGeneralOffice@osagenation-nsn.gov](mailto:AttorneyGeneralOffice@osagenation-nsn.gov), of any typographical or other formal errors, so that corrections may be made prior to official publication.

<sup>2</sup> You ask about a recusal, which means to remove oneself from a case because of a disqualification. Black's Law Dictionary 1467 (10th ed. 2014). This indicates the board member does not intend to participate in *any* board activity. Compare to an abstention, wherein the board member chooses not to vote for or against something because of a personal conflict. The Osage Nation Ethics Law provides that an "abstention by such person from voting or otherwise participating in the official determination or decision shall not affect the presence of a quorum necessary for a government body, agency or commission to take such action or vote upon such matter." 15 ONC § 6-202 (D). Therefore, an abstention allows a board to conduct business even in the absence of a majority of the members voting.

## II. DISCUSSION

The Osage Nation Open Meetings Act requires all public bodies who perform governmental functions to do so at meetings conducted openly. 15 ONC § 7-105. The Open Meetings Act defines a meeting as "the official convening of a *quorum* of members of a public body for the purpose of conducting public business." 15 ONC § 7-104(C)[emphasis added]. Although the Open Meetings Act allows all public bodies to adopt their own rules for conducting meetings, in the absence of said rules, a quorum is defined by Parliamentary law as:

"the smallest number of people who must be present at a meeting so that official decisions can be made; specif., the minimum number of members (a majority of all members, unless otherwise specified in the governing documents) who must be present for a deliberative assemble to legally transact business."<sup>3</sup>

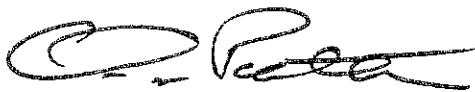
Therefore, a majority of the public body must be present in order to have a meeting. If there is not law or policy to allow for an increase in the number of board members to a majority, say an alternate board member, then the board cannot meet and hence cannot conduct public business of the Osage Nation.

## III. CONCLUSION

**It is, therefore, the official opinion of the Attorney General, that:**

If a board does not have sufficient members to constitute a quorum, or majority, then the board cannot conduct business and law or policy needs to be drafted to ensure the board has at least a majority of members.

Respectfully submitted,



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Clint Patterson,  
1<sup>st</sup> Asst. Attorney General

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<sup>3</sup> *Black's Law Dictionary* 1446 (10<sup>th</sup> ed. 2014).