

Stephanie M. Marchman
SHAREHOLDER
STEPHANIE.MARCHMAN@GRAY-ROBINSON.COM

MEMORANDUM

TO: Colin Murphy, Executive Director, Children’s Trust of Alachua County
FROM: Stephanie Marchman, GrayRobinson, P.A.
DATE: November 9, 2020
SUBJECT: Definition of Quorum

On September 30, 2020, the Governor issued Executive Order 20-246 extending Executive Order 20-69 until 12:01 a.m. on November 1, 2020. Under Executive Order 20-69, local governments were allowed to use communication media technology to hold public meetings, and requirements for a quorum to be present in-person and for a local government body to meet at a specific public place were suspended. A memorandum accompanying Executive Order 20-246 provides that “[l]ocal government bodies should prepare to meet in person as required by Florida law beginning November 1, 2020.”

On October 25, 2020, I issued a memorandum addressing the Sunshine Law requirements (“Sunshine Law Memorandum”) for meetings of the members of the Board of Directors (the “Board”) of the Children’s Trust of Alachua County (the “Trust”) beginning in November, 2020.

In presenting this Sunshine Law Memorandum to the Board, and particularly the following part of the Sunshine Law Memorandum:

***Do the Board members need to be physically present?** Yes, beginning November 1, 2020, at least 6 Board members must be physically present. The By-Laws define a quorum as “[t]he presence of a majority of all members serving on the Trust shall be necessary at any meeting to constitute a quorum to transact business.” While the By-Laws do not require Board members to be “physically” present, the Florida Attorney General has opined numerous times that present means physically present.¹ Additionally, given the language in the memorandum accompanying the recent Executive Order that “local government bodies should prepare to meet in person”, we would advise that physical presence of a quorum is necessary for the Board to transact business of the Trust. In sum, the Board has 10 members; accordingly, 6 members of the Board must be physically present to transact business of the Trust.*

¹ Florida Attorney General Opinion 2020-03 (March 19, 2020).

A member of the Board asked ***whether the Board may change the definition of quorum in the Trust's By-Laws from "a majority of all members" to only two Board members. In short, the answer is no.***

Pursuant to Florida Statute Section 125.901(2)(b)(4) and Section 26.03(b)(4) of Alachua County's Code of Ordinances, the Trust has the authority to "[m]ake and adopt bylaws and rules and regulations for the council's guidance, operation, governance, and maintenance, provided such rules and regulations ***are not inconsistent with federal or state laws or county ordinances.***" (emphasis added). Thus, the Trust has the authority to define quorum within its By-Laws to the extent such a definition is not inconsistent with law.

The question is then, what does the law say with respect to a quorum for a special district and would a by-law defining the quorum as two members be inconsistent with this law?

Of course, state law and county ordinances do not specifically define quorum for special districts or the Trust in particular. However, the following excerpt from Florida Attorney General Opinion 75-178 (June 17, 1975) is instructive:

*The general rule respecting the number of members necessary to constitute a quorum for the conduct of county business is found at 20 C.J.S. Counties s. 88(b) as follows: "The number of members of a county board or court necessary to constitute a quorum for the transaction of official business **is usually a majority.**" And with respect to the vote necessary when a quorum consisting of less than the total membership is present, the general rule is stated at 20 C.J.S. Counties s. 88(c) as follows:*

"Ordinarily, the majority of a quorum of the county board present can perform any act which a majority of the board could perform if all were present, where all the members composing the quorum are competent to act on the question before them."

Similarly, the Supreme Court of South Carolina observed in Gaskins v. Jones, 18 S.E.2d 454 (S.C. 1942), at p. 456:

"In the absence of any statutory or other controlling provision, the common law rule to the effect that a majority of a whole body is necessary to constitute a quorum applies, and no valid act can be done in the absence of a quorum. A majority of such a body must be present to constitute a Board competent to transact business. If a quorum is present, a majority of a quorum is sufficient to act and bind the entire body." (Emphasis supplied.)

The above-stated general rules have been recognized and followed in this state in the case of Scott v. State, 143 So. 249 (Fla. 1932), in which the court concluded at p. 250:

"In the absence of contrary provisions of law, duties duly conferred upon 'the county commissioners' or upon 'the board of county commissioners' may be

*performed by a majority of the county commissioners at a lawful meeting." [citing
Corpus Juris]*

(emphasis added).

Indeed, a review of Alachua County Code of Ordinances conforms with this Attorney General Opinion, whereby a majority of the County Board of Commissioners constitutes a quorum for purposes of conducting county business.² Likewise, various Alachua County boards and commissions also require a majority of members to constitute a quorum, including the Alachua County Library Board of Trustees, Planning Commission, Human Rights Board, and Charter Review Commission.³

Given the above and the absence of any other statutory or code provision altering the common law rule that a majority of a whole body is necessary to constitute a quorum, it is my opinion that the Board may not alter the definition of quorum to consist of only two members. Such a change would be inconsistent with the common law rule and practice of Alachua County. It would also serve to sidestep the Florida Attorney General Opinions advising that a physical quorum must be present for public meetings, thereby exposing the Board to potential Sunshine Law liability.

² Section 21.20, Alachua County Code of Ordinances.

³ Sections 4.2, 111.10, 223.05, and 401.06, Alachua County Code of Ordinances.