
BRENT P. COLLINSON, ATTORNEY AT LAW

DATE: 5/24/2011
TO: KEVIN SMITH
FROM: BRENT P. COLLINSON
RE: OPTIONS IF TIE VOTE

Kevin—This Thursday, the Board will be considering the appointment (and subsequent swearing in) of a fifth Board Member. With 4 Directors being able to vote, there is always the possibility of a tie vote.

Although the law does not specify what to do in the event of a tie vote, there are some options to consider.

Initially, if there is a tie vote, the Board Members should continue with their discussions to see if one or more of the Board Members wishes to change their position.

However, if the vote remains a tie (2-2) vote, or if there is an abstention and the vote is 2-1, there has not been a majority of the entire Board, so it is seen as no action.

Looking at the Elections Code, in the event of a tie vote amongst the general population, the two (or more) candidates are to meet and be chosen "by lot". This would entail drawing cards, flipping a coin, rolling the dice or the like. Another option, although probably not that attractive, is to have an advisory vote of the general population.

However, in either of these scenarios, or any other scenario (having an outside person or entity make a recommendation), the actual decision and appointment rests with the Board Members. So, if there were a process where some other process was used (drawn by lot, advisory election, etc.), there would still have to be three votes by the Board in favor of a particular applicant for the appointment to be valid.

As noted above, because the Agenda describes item 7 as "Filling Board Seat of Katie Morrison" and "selection of new member", that is sufficient notice to also swear in the new member at the Board Meeting, so be sure to bring the Oath of Office to use in the event a majority of the Board does select a new Board Member. If you need a copy of that oath, please let me know.

If you have any further questions or comments, please let me know.

B.C.