

OPINION
77-5

April 22, 1977 (OPINION)

Mr. Robert E. Keim
Secretary, State Banking Board
Department of Banking and
Financial Institutions
State Capitol
Bismarck, ND 58505

Dear Mr. Keim:

This is in response to your letter of April 19, 1977, in which you draw out attention to the following language in Section 6-02-06, North Dakota Century Code.

". . .A determination in favor of such organization must be joined in by a majority of all the members of the board."

You then ask the following question:

"Since the State Banking Board is comprised of six members, does the foregoing language require four affirmative votes to charter a new bank in all cases or will three affirmative votes suffice when one member does not participate in a hearing or decision upon an application for a new bank carrier?"

It is our conclusion that Section 6-02-06, North Dakota Century Code, requires four affirmative votes to charter a new bank in all cases and that, therefore, three affirmative votes will not suffice when one member does not participate in a hearing or decision upon an application for a new bank charter?"

The quoted language is clear and unambiguous. It says ". . . a majority of all the members. . . ." (Emphasis added). Since the language is clear and unambiguous, there is no need for construction.

In *Rausch v. Nelson*, 134 N.W.2d. 519, 525 (N.D. 1965), the court stated:

"'Where the language of a statute is plain and unambiguous, there is no occasion for construction, and this is true even though other meanings of the language employed could be found. The court cannot indulge in speculation as to the probable or possible qualifications which might have been in the mind of the legislature or assume a legislative intent in plain contradiction to words used by the legislature, and need not search for the reasons which prompted the legislature to enact the statute.' 82 C.J.S. Statutes Section 322 (1953)."

". . . It must be presumed that the Legislature intended all that it said, and that it said all that it intended to say. The Legislature must be presumed to have meant what it has plainly expressed. 2 Lewis' Sutherland Stat. Const., 2d. Ed.,

P. 701. It must be presumed, also, that it made no misstate in expressing its purpose and intent. . . ."

See also, *Frederickson v. Burleigh County*, 139 N.W. 2d 250 (N.D. 1965).

In *Chase v. Board of Trustees of Nebraska State Colleges*, 194 Neb. 688, 235 N.W.2d. 223, 117 (1975), the court held as follows:

". . . In section 79-1254.02, R.S.Supp., 1974, original contracts of teaching staff require the sanction 'of a majority of the members of such governing board.' The next sentence, however, provides that such a contract shall remain in effect 'until a majority of the board' votes to amend or terminate it. The latter language is the language with which we are concerned here. In the context of section 70-1254.02, R.S.Supp., 1974, however, we believe the Legislature intended 'a majority of the board' to require a majority of all members of the board and not merely a majority of a quorum. . . ."

Use of the words "a majority of all the members of the board." In Section 6-02-06, North Dakota Century Code, is an even stronger indication that merely a majority of a quorum will not suffice to approve an application for a new bank charter.

Had the Legislature intended a majority of a quorum to suffice, it would have so stated or it would have left the statute silent on the manner.

"In the absence of a contrary statutory provision, a majority of a quorum which constitutes a simple majority of a collective body may act for that body. See *Houser v. School Dist. of South Sioux City*, 189 Neb. 323, 202 N.W.2d. 227.

The quoted provision of Section 6-02-06, North Dakota Century Code, is a contrary statutory provision and does govern the number of votes necessary for the State Banking Board to approve an application for a new bank charter.

I trust this will answer your inquiry.

Sincerely,

ALLEN I. OLSON

Attorney General