

Directors Cannot Vote By Proxy In Board Meetings

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THE Corporation Law is silent on the question as to whether or not members of the board of directors may vote by proxy. Section 21 of Act 1459 simply authorizes a corporation to provide in its by-laws the mode of securing proxies of stockholders or members and voting them. There being neither specific prohibition nor express authorization, may this silence of our Corporation Law be construed as permitting members of the board of directors to vote by proxy in a directors' meeting? As this question has never been raised in our jurisdiction, a reference to American corporate practices will rob the query of its difficulties. Adjudged cases on the subject in the states of the American Union present no conflict of opinion.

Directors are the exclusive executive representatives of the corporation and are charged with the administration of its internal affairs and the management and use of its assets (*Pollitz vs. Wabash R. R. Co.*, 100 N. E. 721). All powers directly conferred by statute, or impliedly granted, of necessity, must be exercised by the directors who are constituted by law as the agency for the doing of corporate acts. In the management of the affairs of the corporation, they are dependent solely upon their own knowledge of its business and their own judgment as to what its interests require (*Beveridge vs. New York Elevated R. R. Co.*, 19 N. E. 489).

The personal appearance of each director at a meeting of directors

as a board is obligatory. Discretionary powers, questions of policy, business administration, all imply the personal attendance at the meeting, so that each director may have the benefit of not only the vote, but the voice of every other director, or at least of enough other directors to constitute a quorum. It is not a question personal to the individual directors or whether they may approve before or after the meeting of what was done at the meeting. A director cannot vote by proxy, because his personal judgment is necessary and he cannot delegate his duties or assign his powers. Neither can he abdicate them. If not present in person to give out or receive business knowledge needed in conducting the affairs of the company he has not performed his duty, because he has not in fact participated in the deliberations of the board. However fully informed he may have been with everything that took place at the meeting, and every word uttered there, and though afterwards, with this knowledge, approved of and assented to all that was there said and done, still the safe and logical principle persists that he was not validly such a participant in its deliberations and actions as to validate by a subsequent approval thereof the minutes of a meeting at which he was not in fact in person (*Lippman vs. Kehoe Stenograph Co.*, 95 Atl. 895).

Directors must be present in person, says the Nebraska Supreme Court, for purposes of consultation. They are elected to meet

and confer and interchange ideas. They cannot vote and act in any other manner (*First National Bank of Omaha et al. vs. East Omaha Box Co.*, 90 N. W. 223) To hold any other view, whatever other courts have held, would be opening a door to wide misunderstanding which the stricter

rule avoids (*Lippman vs. Kehoe Stenograph Co.*, *supra*).

Clearly, indeed, the law does not permit the stockholders to create a sterilized board of directors (*Jackson vs. Hooper*, 75 Atl. 568) and, therefore, members of the board must vote in person in a directors' meeting.

HISTORIC CONTINUITY

“**L**EARNING, my learned brethren, is a very good thing. I should be the last to undervalue it, having done my share of quotation from the Year Books. But it is liable to lead us astray. The law, so far as it depends on learning is indeed, as it has been called, the government of the living by the dead. To a very considerable extent no doubt it is inevitable that the living should be so governed. The past gives us our vocabulary and fixes the limits of our imagination: we cannot get away from it. There is, too, a peculiar logical pleasure in making manifest the continuity between what we are doing and what has been done before. But the present has a right to govern itself so far as it can; and it ought always to be remembered that historic continuity with the past is not a duty, it is only a necessity.”

—MR. JUSTICE HOLMES, *Collected Legal Papers*.