



MEMORANDUM

FROM John R. Hutt, Curry County Counsel
TO Board of Commissioners
RE: Censure Discussion
DATE: January 13 2021

Introduction

On November 18, 2020, the Board voted to censure Court Boice. On January 4, 2021, the Board voted to lift the censure. There were questions whether Commissioner Boice could vote on the subject of his censure. The law on censures is not clear-cut. Because of the lack of clarity on the issue, this memo concludes that it was not illegal for Commissioner Boice to vote on the question of his censure.

Discussion

1. What is a censure?

There is little Oregon case law on censure. By statute, the Oregon Supreme Court can issue a censure in a judicial discipline action. The United States Congress can issue a censure. Research has found that the City of Stockton, California has a policy on censures. In each case, the respective body either has been given statutory authority, or has adopted a rule regarding the process and effects of the particular censure for its members.

The Curry County Board of Commissioners is responsible for all matters of county concern. The Board does not have any rules or ordinances regarding procedures or substance of censure. As such, we are looking at censure for the first time.

Roberts Rules of Order, and other guides on parliamentary procedure help organizations regulate conduct of meetings and members. They are guidelines and not binding law. Those authorities, like much publication nowadays are on the internet. In general, a censure is a public statement of disapproval by a body about conduct of one of its members.

A. Is a censure discipline?

Some say a censure is discipline, and a member of a body may not vote on their own discipline. See e.g.; Roberts Rules of Order, attached. For instance, in Congress, a censure deprives members of committee appointments. Arguably such a censure is a form of discipline.

However, there is a question whether censure is discipline. See also, Roberts Rule Parliamentary forum attached. When there is no negative consequence to the member, it is likely not discipline.

B. Can a member vote on a question of their own censure?

If it is not discipline, any rule against voting in a case of a person's own discipline goes away. A review of the commentators on those authorities reveals that censures may or may not be discipline, and that a member may or may not vote on their own censure. See attached.

There was an example of a minority of a body's membership raised a censure of the conduct of the majority of the body. If the majority of the body could not vote, then the concept of majority rule is thrown out the window.

C. Is it ethical to vote on the question of one's censure?

There are ethical conflict of interest rules in Oregon which prevent members from voting. Those rules typically deal with financial benefit or gain. ORS Chapter 244 describes conflict of interest as a matter where a public official will stand to gain financially from a decision being voted on.

The censure involving Boice explained that the Board reserved the right to deny providing a legal defense to Boice in the future. See, e.g.; ORS 30.287. That is not a decision to deprive Boice of a defense. Therefore, by voting to remove the censure, Boice did not realize any financial gain.

Conclusion

I found no binding authority that said a Commissioner could not vote on the question of their own censure. Curry County has no rules regarding what a censure is or is not. The Board can make its own rules or govern its own conduct during censure voting. As such, the Board may decide to allow the member subject to censure to vote. That was implicit in the matter because Boice voted both against the censure in the first place, and voted to rescind the censure.

It is not clear that the Boice censure was punishment. There was no financial gain to Boice by voting. I do not conclude there was a violation of state ethics law.

While some authorities were of the opinion that a Commissioner should not vote in such a circumstance, those authorities are not binding and not unanimous.

As such, I am unable to conclude that there was any illegality in the lifting of the censure.



John R. Hutt
Curry County Counsel

On a tie vote the motion is lost, and the chair, if a member of the assembly, may vote to make it a tie unless the vote is by ballot. The chair cannot, however, vote twice, first to make a tie and then give the casting vote. In case of an appeal [21], though the question is, "Shall the decision of the chair stand as the judgment of the assembly?" a tie vote, even though his vote made it a tie, sustains the chair, upon the principle that the decision of the chair can be reversed only by a majority, including the chair if a member of the assembly.

It is a general rule that no one can vote on a question in which he has a direct personal or pecuniary interest. Yet this does not prevent a member from voting for himself for any office or other position, as voting for a delegate or for a member of a committee; nor from voting when other members are included with him in the motion, even though he has a personal or pecuniary interest in the result, as voting on charges preferred against more than one person at a time, or on a resolution to increase the salaries of all the members. If a member could in no case vote on a question affecting himself, it would be impossible for a society to vote to hold a banquet, or for a legislature to vote salaries to members, or for the majority to prevent a small minority from preferring charges against them and suspending or expelling them. By simply including the names of all the members, except those of their own faction, in a resolution preferring charges against them, the minority could get all the power in their own hands, were it not for the fact that in such a case all the members are entitled to vote regardless of their personal interest. A sense of delicacy usually prevents a member from exercising this right of voting in matters affecting himself except where his vote might affect the result. After charges are preferred against a member, and the assembly has ordered him to appear for trial, he is theoretically under arrest, and is deprived of all rights of membership and therefore cannot vote until his case is disposed of.

A member has the right to change his vote up to the time the vote is finally announced. After that, he can make the change only by permission of the assembly, which may be given by general consent; that is, by no member's objecting when the chair inquires if any one objects. If objection is made, a motion may be made to grant the permission, which motion is undebatable.

While it is the duty of every member who has an opinion on the question to express it by his vote, yet he cannot be compelled to do so. He may prefer to abstain from voting, though he knows the effect is the same as if he voted on the prevailing side.

Voting by Ballot. The main object of this form of voting is secrecy, and it is resorted to when the question is of such a nature that some members might hesitate to vote publicly their true sentiments. Its special use is in the reception of members, elections, and trials of members and officers, as well as in the preliminary steps in both cases, and the by-laws should require the vote to be by ballot in such cases. Where the by-laws do not require the vote to be by ballot, it can be so ordered by a majority vote, or by general consent. Such motions are undebatable. Voting by ballot is rarely, if ever, used in legislative bodies, but in ordinary societies, especially secret ones, it is habitually used in connection with elections and trials, and sometimes for the selection of the next place for the meeting of a convention. As the usual object of the ballot is secrecy, where the by-laws require the vote to be taken by ballot any motion is out of order which members cannot oppose without exposing their views on the question to be decided by ballot. Thus, it is out of order to move that one person cast the ballot of the assembly for a certain person when the by-laws require the vote to be by ballot. So, when the ballot is not unanimous it is out of order to move to make the vote unanimous, unless the motion is voted on by ballot so as to allow members to vote against it in secrecy.

In some cases black balls and white ones and a ballot box are provided for voting, where the question can be answered yes or no. The white ball answers yes, and the black one no. But in ordinary deliberative assemblies the ballots are strips of paper upon which are printed, or written, yes or no, or the names of the candidates, as the case may be. These ballots are first distributed and are afterwards collected by tellers, either by being dropped into a hat or box by the members, who remain in their seats, or by the members coming to the ballot box and handing their folded ballot to a teller, who deposits it in the ballot box. In the latter case it is necessary for the tellers to see that no member votes twice, which in large societies can be best done by checking off the names from a list of members as the ballots are deposited. The ballots should usually be folded so that if more than one is voted by the same person the tellers will detect it in unfolding the ballot. In satisfying themselves that only one ballot is voted, the vote may be exposed if the ballot is not folded.

When every one appears to have voted, the chair inquires, "Have all voted who wish to?" and if there is no response he says, "The polls are closed," whereupon the tellers proceed to count the ballots. If in unfolding the ballots it is found that two have been folded together, both are rejected as fraudulent. A blank piece of paper is not counted as a ballot and would not cause the rejection of the ballot with which it was folded. All blanks are ignored as simply waste paper, and are not reported, the members who do not wish to vote adopting this method of concealing the fact. Small technical errors, like the misspelling of a word, should not be noticed if the meaning of the ballot is clear. For instance, if at the trial of a member a ballot was written "guilty," every one knows what was intended. In all cases where the name on the ballot sounds like the name of one of the candidates it should be so credited. If a ballot is written "Johnson," or "Johnston," or "Johnstone," it should be credited to the candidate whose name is one of these: but if there are two candidates with these names and no eligible member with the name on the ballot, it must be rejected as illegal, or reported to the chair, who will at once submit the question to the assembly as to whom the ballot should be credited. If these doubtful ballots will not affect the result, the tellers may make their full report without asking for instructions in regard to them, placing these doubtful votes opposite the exact name as written on the ballot. Votes for ineligible persons and



J. J.

Posted April 10, 2018



One question I have is if the Vice President had expressed an opinion on the motion to censure. In such a case, someone else should chair.

I would note that censure can be a penalty in a disciplinary action. A motion "That _____ be censured," however, is in order as it expresses the assembly's opinion, and nothing more. Where you will find this in RONR is the famous "Officer George" example, p. 137, ll. 20-25. As noted the footnote p. 643, clearly states this. I would also suggest that you look at p. 125, ll. 15-20, showing a motion to Ratify being amended into a motion to censure; that would be impossible, if censure were a disciplinary action in that case.

You may also want to look at "Censure: Penalty versus Motion," *Parliamentary Journal*, April 2012, which specifically delineates the difference.



Quote



J. J.

Posted May 25, 2012

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✓ **On 5/25/2012 at 12:28 PM, Elected Official said:**

I would like to add on to this and ask if the motion is made without prior notice to the members being censured and also to the board would there be a required number of votes for the motion to be adopted. In short the motion was presented without prior notice. In the case I am asking about two members were censured for actions without prior notice. The vote was taken and 4 members voted to censure, 3 members abstained and the two censured members votes were not allowed. The total membership of 9 were present.

The members (plural) being censured may vote (see p. 407, ll. 21-31).

No notice is necessary.



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The abstentions don't count, so the vote was 4-0, and the motion was adopted. It was improper to deny the two named members their right to vote on the motion, and a point of order to that effect can be raised at any time (RONR 11th ed. p. 252 II. 20-24). However, this would not change the outcome of the vote, since even if one assume that the two members would have voted against the motion, the vote count would then have been 4-2 (still a majority in favor) so the motion stands (RONR p. 252 II. 24-30).

Again, the abstentions don't count -- majority vote means the majority (more than half) of those present *and voting*. In other words, there is no way to construe this as a potential 4-5 vote (adding the abstentions to the assumed 'no' votes of