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Although it is posted on the internet, this opinion is binding only on the  
parties in the case and its use in other cases is limited. R. 1:36-3.

SUPERIOR COURT OF NEW JERSEY  
APPELLATE DIVISION  
DOCKET NO. A-2561-15T3

IN THE MATTER OF APPEAL OF  
THE DECISION OF THE FRANKLIN  
TOWNSHIP ETHICS BOARD (SOMERSET  
COUNTY) IN FTEB COMPLAINT #11-01.

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Argued October 19, 2017 – Decided November 14, 2017

Before Judges Simonelli, Haas and Rothstadt.

On appeal from Department of Community  
Affairs, Local Finance Board, Complaint # 13-  
024.

Jeff Carter, appellant, argued the cause pro  
se.

Bruce W. Padula argued the cause for  
respondent James Wickman (Cleary Jacobbe  
Alfieri Jacobs, LLC, attorneys; Mr. Padula and  
Jaclyn M. Kavendek, on the brief).

Melanie R. Walter, Deputy Attorney General,  
argued the cause for respondent Local Finance  
Board (Christopher S. Porrino, Attorney  
General, attorney; Melissa Dutton Schaffer,  
Assistant Attorney General, of counsel; Ms.  
Walter, on the brief).

PER CURIAM

Appellant Jeff Carter appeals from the January 13, 2016 decision of the Local Finance Board of the Department of Community Affairs (Board), which determined that respondent James Wickman did not violate the Local Government Ethics Law, N.J.S.A. 40A:9-22.1 to -22.25, by voting to approve a settlement of a lawsuit in which he was a defendant. On appeal, Carter, Wickman, and the Board have all asserted that the Board did not have a quorum when it rendered its decision.<sup>1</sup> We agree.

In view of our resolution of this appeal, we need only briefly recite the pertinent facts and procedural history. Wickman was a member of the Board of Fire Commissioners in Fire District #1 in Franklin Township. In August 2011, Carter filed a complaint with the Franklin Township Ethics Board (FTEB) alleging that Wickman improperly participated in the Board of Fire Commissioners' decision to approve a settlement of a lawsuit in which four of the Board's five commissioners, including Wickman, were named as

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<sup>1</sup> Carter argues in Point XII of his brief that the Board's "final decision is ultra vires due to an insufficient quorum pursuant to N.J.S.A. 40A:9-22.9." In Point III of his brief, Wickman asserts that the matter must "be remanded to the [Board] because of a lack of quorum." Finally, the Board filed a motion with this court before the matter was fully briefed, seeking a remand because it did not a quorum when it rendered the January 13, 2016 decision. We issued an interlocutory order denying that motion, but revisit the issue now after considering the parties' merits briefs and oral argument.

defendants.<sup>2</sup> Following a public hearing, the FTEB found that Wickman violated the ethics code and fined him \$250.

Wickman appealed this decision to the Board, which remanded the matter to the FTEB because that agency had failed to "provid[e] a legal analysis supporting" its decision. However, the Franklin Township Council dissolved the FTEB before it could reconsider the matter and, therefore, the Board resumed jurisdiction of Wickman's appeal. The Board reviewed the record developed before the FTEB and, on January 13, 2016, rendered a written decision reversing the FTEB's decision, and concluding that Wickman did not violate either N.J.S.A. 40A:9-22.5(c) or (d) of the Local Government Ethics Law. Only four Board members participated in this decision.

The Board consists "of the Director of the Division of Local Government Services as chair[person] and seven members appointed by the Governor by and with the advice and consent of the Senate." N.J.S.A. 52:27D-18.1. When "render[ing] a decision as to whether the conduct of [an] officer or employee is in conflict with the provisions of [the Local Government Ethics Law, the] decision

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<sup>2</sup> The lawsuit was filed by Carter's sister. She also named the Board of Fire Commissioners and the Millstone Valley Fire Department as defendants. The complaint did not specify whether the four commissioners were sued in their individual or official capacities.

shall be made by no less than two-thirds of all members of the [B]oard." N.J.S.A. 40A:9-22.9 (emphasis added).

It is well established that statutes like N.J.S.A. 40A:9-22.9 that "define a quorum as a majority or larger percentage of 'all the members' or of 'the authorized membership,' or words to that effect, must . . . be read as requiring a fixed number of members which remains constant despite any vacancies." N.J. Election Law Enf't Comm'n v. DiVincenzo, 445 N.J. Super. 187, 200 (App. Div. 2016) (quoting 1991 Formal Op. Att'y Gen. N.J. No. 3 (May 7, 1991)); see also Ross v. Miller, 115 N.J.L. 61, 64 (1935) (explaining that "use of the phrase 'a majority of all the members' of the councilmanic body, both in relation to the number constituting a quorum and in prescribing the requisites of valid action, [means] . . . the full membership commanded by the act, and not a reduced body, however occurring").


Thus, because N.J.S.A. 40A:9-22.9 states that Board decisions on ethics issues must "be made by no less than two-thirds of all members of the [B]oard," at least six of the Board's eight statutorily-commanded members had to participate in the decision it rendered in this case. However, only four Board members considered Wickman's appeal.

Because the Board acted with only four voting members present when rendering the January 13, 2016 decision, the decision is

void. Therefore, we vacate the Board's decision and remand the matter to the Board for further proceedings.<sup>3</sup>

Vacated and remanded. We do not retain jurisdiction.

I hereby certify that the foregoing  
is a true copy of the original on  
file in my office.

  
CLERK OF THE APPELLATE DIVISION

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<sup>3</sup> In light of this determination, we do not reach the other arguments presented by the parties on appeal.