

1. Salary of County Judges, Sections 11808 - 2092 - 655
2. Municipalities Cities of the 4th Class quorum when mayor can vote.

February 1st, 1933



Hon. Thomas A. Matthews,  
Prosecuting Attorney, St. Francois County,  
Farmington, Missouri

Dear Sir:

Your letter addressed to the Attorney-General has been handed the undersigned for attention. You request an opinion and in connection therewith state the following facts:

" I would appreciate it very much if you would give me an opinion with reference to the pay of Judges of the County Courts in Missouri during the past two years and beginning of the present term of Associate Members of our County Court.

I have prepared an opinion, however, before finally submitting same to our County Court, would like to have your opinion or concur with me if you find that I am correct in the premises. I submit a copy of my search of the law in this connection.

I have an additional matter that I would like for you to give me your opinion and it is as follows:

The City of Elvins, St. Francois County, Missouri, is a city of fourth class having a Mayor and Board of Aldermen, comprised of six members. 'On the question of passing bills and paying out money', the Ordinance of the City of Elvins provide that such things may be done by a majority vote of the Board of Aldermen, the Mayor voting only in cases where the vote may be evenly divided on that proposition.

It has frequently happened that only five, and sometime only four members of the Board attend the meetings. When only five members are in attendance, a proposition may receive

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three affirmative votes, two members voting in the negative. It has been held that a proposition being so voted upon is carried, since three is a majority. Others contend that to carry, the proposition must in all cases receive at least four votes, since four is a majority of the Board; and that any proposition receiving less than four votes would be lost. On these points I would ask your opinion."

You state that you have investigated the first proposition, and as a result of your investigation you have prepared a brief setting forth your conclusions of the law upon the subject. Which brief you were kind enough to enclose and which is as follows:

"In regard to the method of determining the population for arriving at the salaries of various County officers. The Statutes are not in accord. Some base the method of determining the population by multiplying the number of votes cast at the last presidential election vote by three and one-half, and Section 11808, R.S. Mo. 1919, provided that the vote at the last General election shall be used, multiplied by five. Other statutes provide for other methods of arriving at the salaries of some officers.

Section 11808, R.S. Mo. 1929, is a general statute, enacted prior to most of the other sections, which are special in their nature in that they apply to specifically designated officers. For these reasons said Section 11808 should not be resorted to except when there is no other method applicable.

In the case of O'Connor v. Riedel, et al., the Supreme Court, en banc, held that effect was to be given to the law that applied to only one office, so long as it operates uniformly throughout the state as to that particular office. No attempt was made to harmonize the sections and under the ruling of the court in that case no such attempt will ever be made.

It therefore follows that so long as a statute is complete in itself, that effect will be given to all of the terms of such statute. Therefore, the words "general election" as used in Section 11808, R.S. Mo. 1929, do not mean presidential election, but have the usual meaning applied to the term, and, therefore refer to the election held every two years. Section 655, R.S. Mo. 1929, provides that the construction of all statutes of this state shall be by the rules set out in such statutes,

unless such construction is plainly repugnant to the intent of the Legislature, or the context of the statute. The sixteenth clause of the statute define "general election" as follows: 'The term 'general election' refers to the election required to be held on the Tuesday succeeding the first Monday of November, biennially.'

"The vote in St. Francois County at the 1928 presidential election was approximately 13,202. In 1930 the vote was approximately 10,888.

"Section 2092, R.S. Mo. 1929, provides that in counties having 60,000 and less than 90,000, the county judges shall receive \$2500 per annum. If the presidential vote of 1928 is used as a basis, then St. Francois County has more than 60,000 inhabitants within the meaning of Section 2092. If the election of 1930 is used, St. Francois County has less than 60,000 inhabitants. Therefore, the present county judges of St. Francois County during this term of office have never been entitled to \$2500 each per annum, but have been entitled to only five dollars per day that the court met, and mileage.

"Furthermore, Section 2092, R.S. Mo. 1929, was amended in 1931. The 1931 Session Acts, page 190, amended said Section by providing that the \$2500 per annum shall be paid only in counties having 75,000 inhabitants. Therefore, at this time, even if the presidential election vote of 1928 is used as a basis, this county does not have 75,000 inhabitants, and, therefore, the county judges are not entitled to the \$2500 per annum. Although the salary of an officer may not be increased during his term of office, it may be decreased.

"It is therefore my opinion that the present members of the County Court have never been entitled to receive \$2500 each per annum, and that their compensation should be based on the election vote of 1930 multiplied by five."

- We have gone over your opinion and advise that the law as therein stated and the conclusions which you draw therefrom coincide with the opinion of this department upon that subject.

Answering your second inquiry, we find in 43 Corpus Juris, 502, the following fundamental declarations of law:

"A quorum under the common law is a bare majority."

"Unless it is otherwise provided by charter or statute the majority of the governing body constitutes a quorum. In reckoning a quorum, the general rule is that in the absence of a controll-

ing charter or statutory provision affecting the ruling, the total number of all the duly elected and qualified members of the body elected to it, is taken as the basis. If a mayor is only a presiding officer and not a component member, he is not to be reckoned in the count."

The appellate court in this state, however, in the case of John Dougherty v. City of Excelsior Springs, 110 Mo. App. 623, has, we think, answered the first division of your second inquiry and by inference and implication the second portion thereof. In that case, the Mayor of Excelsior Springs employed the plaintiff Dougherty as legal counsel in a certain damage suit, and at a regular meeting of the Board of Aldermen a bill presented by the attorney for his services was allowed and a warrant was ordered to be drawn upon the city treasury therefor. The warrant was drawn in accordance with the order made, presented to the treasurer, but not paid for lack of funds. The town of Excelsior Springs was a city of the fourth class and its Board of Aldermen consisted of four members. In the record made by the city council it appeared that for the allowance of the bill for the attorney's services, there were two votes cast in the affirmative and one in the negative. The majority opinion discussing the authority of the board is short and we are quoting it in full as follows:

"I believe the judgement of the trial court should be affirmed. The statute applicable (Section 5907, Revised Statutes 1899) reads: 'In case a city attorney has been appointed, the mayor and board of aldermen may, if they deem it necessary, employ additional counsel and pay them reasonable compensation for any legal services demanded by the city.' As stated by Judge Smith, the board of aldermen consisted of four members and three of these were present at the meeting which allowed plaintiff's account, two of them voting 'yes' and one voting 'no'. The three being a majority of the whole body constituted a quorum, and the two voting 'yes' being a majority of that quorum made a valid action of the board of aldermen. (1 Dillon on Munic. Corp. secs. 278-282.) It is not necessary that a majority of the whole body favor a measure, unless the law governing such body so declares. On the contrary, it is only necessary that a majority of those present (if they constitute a quorum) should favor the measure."

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Upon that authority we are of the opinion that when only five members of your board are in attendance that such number constitutes a quorum for the transaction of business, and that three voting at such meeting and casting their votes in the affirmative, the proposition should be declared carried.

As to the second proposition under question two, the Mayor of a city of this class is given the right to cast a vote in the event of a tie. The case above cited being authority for the right of a majority to constitute a quorum for transacting the business of the body, it is our opinion that in the event of a tie vote in the quorum present, such quorum being a majority of the board, the mayor would have a right to cast the deciding vote.

Very truly yours,

Carl C. Abington,  
Assistant Attorney-General

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Approved :

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Roy McKittrick,  
Attorney-General