

CITIES, TOWNS & VILLAGES:
CITY COUNCIL:
QUORUM:

A legal quorum of the Board of Aldermen of the City of Frontenac a fourth class city was not destroyed when three aldermen left a special meeting of the

Board of Aldermen with the purpose of preventing a vote on a resolution and that the resolution, which received more than a majority of the votes cast, was legally adopted.

OPINION NO. 324

October 9, 1969

Honorable George E. Murray
State Representative, District 38
3 Williamsburg Court
Creve Coeur, Missouri 63141

Dear Representative Murray:

This official opinion is issued in response to your request for a ruling.

Your question concerns the legality of a vote adopting a resolution by three members of the Board of Aldermen of Frontenac, a fourth class city. The Board met and all six members were reported present. However, when a certain resolution was presented for a vote, three aldermen walked out of the meeting, and the remaining three aldermen voted to adopt the resolution. You request an opinion as to ". . . whether or not the departure of the three aldermen prevented a vote on the resolution by the three remaining aldermen, and the legality of their vote."

Ordinance No. 89 of the City of Frontenac adopts Roberts Rules of Order to govern the proceedings of the Board. Roberts Rules defines a quorum as ". . . such a number as must be present in order that business can be legally transacted. . . ." Seventy-fifth Edition, Section 64, Page 257. Ordinance No. 89 also provides a quorum shall be ". . . a majority of the Board of Aldermen. . ." or, in other words, four aldermen constitute a quorum. But neither Roberts Rules, Ordinance 89 or Chapter 79, RSMo 1959 (which concerns fourth class cities) says what the effect is when members of the Board leave a meeting when a vote is called.

There have been some rulings in the analagous situation of school board meetings. In the case of Bonsack & Pearce, Inc., v. School Dist. of Marceline, 49 S.W.2d 1085 (K.C. Ct.App. 1932), a suit was brought on a contract with a school district. The contract had been agreed to by three members of the school board at a meeting

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attended by five of the six board members. There were no negative votes on the contract. The court said at page 1088:

"Five of the six members of the school board were present and by their presence constituted a quorum, and it became and was the duty of each and every member to vote for or against any proposition which was presented to them.
. . ."

The Court, in effect, held the members could not remain silent when presented with a resolution requiring a vote. By the same reasoning, they could not destroy a quorum by leaving the meeting for the purpose of preventing a vote.

In a previous opinion from this office issued to Honorable Lawrence F. Gepford, Prosecuting Attorney, Jackson County, Kansas City, Missouri, it was concluded that school board members who left a meeting to destroy a quorum did not thereby destroy the quorum. An opinion was requested as to the situation where two members of a six man board left the meeting to avoid voting for a replacement for a member who had just resigned. The three remaining members then voted for a replacement. Our opinion said at page 16:

"The action of Mr. McGovern and Mr. Dunn in withdrawing from the meeting must be considered to be arbitrary because it is an attempt by a minority (two members) to prevent a quorum and thus to thwart the action of a majority (three members). Since each and every member has a duty to vote for or against any proposition which is presented to them (Bonsack & Pearce v. School Dist. of Marceline, supra), there can be no good reason for the precipitous withdrawal of Mr. McGovern and Mr. Dunn after the motion was made and seconded and before a vote was called thereon. Unlike the Gaskins case, supra, no vote had been taken before Mr. McGovern and Mr. Dunn withdrew. Their action cannot be justified when it is for the sole purpose of defeating a quorum. Under these specific facts Mr. McGovern and Mr. Dunn must be considered to be present for the determination of the existence of a quorum at the vote on the proposition which was submitted to them, even though they had actually left the room at the time the vote was taken."

Under our opinion above, there was a quorum for the vote on the resolution involved here.

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The problem, then, is one of ascertaining whether the vote by the three aldermen who remained in the meeting was sufficient to adopt the resolution. It should be noted first that a resolution is not an ordinance and therefore the requirements of Section 79.130, RSMo 1959, do not apply. *City of Salisbury v. Nagel*, 420 S.W.2d 37, 42 (K.C. App. 1967).

There appear to be no special requirements or formalities in the statutes or ordinances for the passage of a resolution. In describing a resolution, the court in *Julian v. The Mayor, Councilmen and Citizens of the City of Liberty*, 391 S.W.2d 864, 867 (Mo. 1965) said, ". . . A resolution is not a law, and in substance there is no difference between a resolution, order, and motion." Roberts Rules of Order, which, as we noted above, was adopted by the Board of Aldermen of Frontenac, provides the requirements for passage of motions at page 202:

"Any legitimate motion . . . requires for its adoption only a majority; that is, more than half of the votes cast, ignoring blanks, at a legal meeting where a quorum is present, unless a larger vote for its adoption is required by the rules of the assembly." (emphasis added)

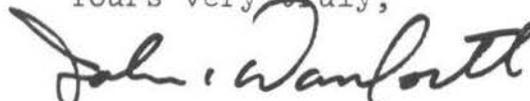
Under this rule the resolution was legally passed because only three votes were cast and two favorable votes would have been sufficient to pass the resolution.

CONCLUSION

Therefore, it is the conclusion of this office that a legal quorum of the Board of Aldermen of the City of Frontenac a fourth class city was not destroyed when three aldermen left a special meeting of the Board of Aldermen with the purpose of preventing a vote on a resolution, and that the resolution, which received more than a majority of the votes cast, was legally adopted.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Alfred C. Sikes.

Yours very truly,


JOHN C. DANFORTH
Attorney General