

SPECIAL ROAD DISTRICT COMMISSIONERS - Mayor and city aldermen members' rights of vote selecting commissioners. Section 8026, R.S.Mo. 1929.

February 21, 1933



Hon. Lawrence Holman  
Prosecuting Attorney  
Randolph County  
Moberly, Missouri

Dear Mr. Holman:

Your letter addressed to the Attorney-General has been handed the undersigned for attention:

You ask for a construction of Section 8026, R.S. Mo. 1929, and in connection therewith state the following:

"The question has come up several times in this County, relative to the interpretation of the provision on the end of Section 8026, Revised Statutes, 1929, relative to appointment of special road district commissioners. The statute provides that the Mayor and City Council of the City within the district, and the Judges of the County Court, may elect this commissioner and it is further provided that where the city is located further than ten miles from the meeting of the County Court the Mayor and City Council may make a written certificate of their choice of the commissioners and mail the same to the County Clerk and that said certificate shall be given the same consideration as though the Board and Mayor were present at the meeting of the Court.

In the case that has arisen here, there are four members of the City Council, and, at their meeting, two voted for "A" and two for "B", and the Mayor cast his vote for "A",

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giving him three votes and "B" two, and they certified "A's" name as their choice. Now the question I have in mind is: Should they certify two votes for "B" and three votes for "A", or, should they certify that "A" was the choice of the five? The only case I find construing that section is in 12 SW(2nd) 489, and the reading of that case gives the impression that they should certify the way they voted, so that the votes may be counted when the County Court meets, just as if all five were present at said meeting. That is the more reasonable interpretation in my opinion, because, in the case I have in mind, if "B" should receive as many as two votes from the County Court, he would be elected the road commissioner. It seems to me that he should not be handicapped because the votes are submitted by mail rather than voted personally by the Council and Mayor."

After reading the above section, together with the case cited in your letter, be advised that this department coincides with your construction as set forth in your letter.

Yours very truly,

CARL C. ABINGTON  
Assistant Attorney-General

APPROVED:

ROY McKITTRICK  
Attorney General