

CITY ORDINANCES: Validity of same based on necessary statutory vote on final passage.

March 25, 1935.

Honorable E. E. Oliver, Mayor
Charleston, Missouri

Dear Sir:

Your request of March 15, 1935, for an opinion is as follows:

"If consistant, I will appreciate very much your opinion on the following matter.

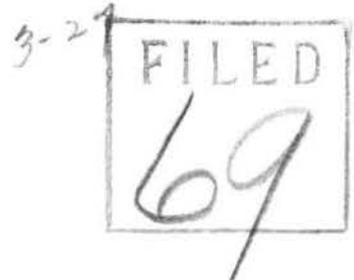
"At the regular meeting of the City Council on February 4th, an ordinance pretaining to the salaries of Mayor and Councilmen was presented, same was read for first, second and third time and voted on by roll call with four in favor and three against.

"Charleston Mo. is a City of third class and has eight elective Councilmen, due to the death of one councilman in November the board consists now of only seven members all of which were present and voted at the February meeting.

"Opinions vary as to whether or not the ordinance passed, I will appreciate very much any enlightenment you may give me on the matter."

Section 6735 R. S. Mo. provides for the number of councilmen to be elected in cities of the third class and reads as follows:

"The council shall, by ordinance divide the city into not less than four wards, and two councilmen shall be elected from each of such wards by the qualified voters there-



of at the first election for councilmen in cities hereafter adopting the provisions of this article; the one receiving the highest number of votes in each ward shall hold his office for two years, and the one receiving the next highest number of votes shall hold his office for one year; but thereafter each ward shall elect annually one councilman, who shall hold his office for two years.

You state in your letter that eight were elected but since the election one has died.

Section 6745 R. S. Mo. 1929, specifies who are officers in cities of the third class and provides:

"The term 'officer,' whenever used in this article, shall include any person holding any situation under the city government or any of its departments, with an annual salary, or for a definite term of office."

Section 6747 R. S. Mo. 1929, gives to the council the right to fix salaries by ordinance in cities of the third class, and reads as follows:

"The council shall have power to fix the compensation of all the officers and employes of the city; but the salary of an officer shall not be charged during the time for which he was elected or appointed."

There can be no doubt that members of the city council are officers, within the meaning of the above section, when they have otherwise qualified for such office as required by law. The qualifications to hold office are not questioned in your request.

Section 6740 R. S. Mo. 1929, specifies how proceedings of council shall be kept, and provides:

"The council shall cause to be kept a journal of its proceedings, and the ayes and nays of the members shall be entered on any question at the desire of any two members. The council may prescribe and enforce such rules as may be necessary to secure the attendance of its members and the expeditious transaction of its business."

Section 6800 R. S. Mo. 1929, provides the style of ordinance and when an ordinance becomes a law, and reads as follows:

"The style of the ordinances of the city shall be: 'Be it ordained by the council of the city of _____, as follows.' No ordinance shall be passed except by bill, and no bill shall become an ordinance unless on its final passage a majority of the members elected to the council shall vote therefor, and the ayes and nays shall be entered on the journal; and all bills shall be read three times before their passage. No ordinance shall be revived or re-enacted by mere reference to the title thereof, but the same shall be set forth at length, as if it were an original ordinance. No bill shall become an ordinance until it shall have been signed by the officer presiding at the meeting of the council at which it shall have been passed. When so signed, it shall be delivered to the mayor for his approval and signature, or his veto."

We take it from the above section that a majority of the members elected to the council constitute a quorum to transact business.

In the case of O'Dwyer v. Monett, 123 Mo. App. 184; 100 S. W. 670, l. c. 671, the Appellate Court said:

"The journal shows that the latter ordinance was read three times at the meeting of the city council on March 24, 1903, and that there were three votes in favor of its passage and one vote against it. Section 5767, chap. 91, art. 4, concerning cities of the third class, R. S. 1899, provides that cities of the third class must be divided 'into not less than four wards, and two councilmen shall be elected from each of such wards,' etc. Section 5832, same chapter and article, provides: 'No ordinance shall be passed except by bill, and no bill shall become an ordinance unless on its final passage a majority of the members elected to the council shall vote therefor,' The ordinance, therefore, did not received the votes of a majority of the members elected, and failed to pass. In these circumstances, the learned trial court correctly held that the ordinance fixing the salary of the marshal at forty dollars per month, as printed in the revised ordinances, was in full force and effect, and on this finding properly rendered judgment for defendant, as plaintiff had received his full salary as fixed by the revised ordinances. The contention of the plaintiff is not that there was a valid ordinance fixing his salary at fifty dollars per month, but that the city is extopped by the action of the city council in auditing his salary at fifty dollars per month, and for the reason he claimed and believed he was entitled to it. A city councilman like a city marshal is a public official. His duties are defined by law. He is not the general or pri-

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vate agent of the city, and the councilmen could only bind the city by such contracts as they were by law authorized to make, and since the right of any public officer to compensation can only exist by law, the city council was powerless to bind the city in any manner to pay a compensation to the marshal not fixed by a valid ordinance."

CONCLUSION.

It is the opinion of this office that an ordinance, to be valid in your City, must receive the necessary vote on final passage as provided in Section 6800, supra. It must receive a majority of the votes from the eight councilmen who were elected, as provided by law and as admitted in your request. The death of a member does not change the express language of the Statute. It takes five votes to make the statutory majority.

We are of the opinion that the ordinance in question did not pass as required by statute.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

ROY McKITTRICK
Attorney General.

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