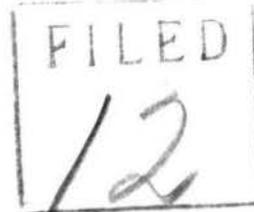


ROADS & BRIDGES:

Mayor of City of Fourth Class has a right to cast a vote for special road commissioner.

2-19

February 19, 1936.



Mr. Percy M. Brown
Circuit Clerk
Saline County
Marshall, Missouri

Dear Sir:

This is to acknowledge your letter as follows:

"Will you please send this office a written opinion as to whether or not a Mayor of a Fourth Class City has the right to cast a vote for a Road Commissioner only in case of a tie?"

We assume that the Commissioner to be appointed is by virtue of the provisions of Section 8026, R. S. Mo. 1929, which relates to commissioners of special road districts.

The Supreme Court of Missouri in State ex inf. v. Meyer, 12 S. W. (2d) 489, had before it for determination the precise question inquired of by you. In its opinion, the court said the following were the facts:

"By authority of Section 10802, R. S. 1919 (Sec. 8026, R. S. 1929), and on February 17, 1927, the mayor and members of the council of Mt. Vernon met with the members of the county court of Lawrence County in the county court room in Mt. Vernon to appoint a road commissioner for the Mt. Vernon Special Road District. Mt. Vernon is a city of the fourth class, with a mayor and eight councilmen, and is the county seat of Lawrence County.

At the meeting, the members of the county court, the mayor, and seven councilmen were present. On a vote being taken, respondent Charles Meyer received six votes and relator William Jones received four votes. The presiding judge did not vote, and one of the councilmen was absent."

As to the questions presented before the court for determination in the above case, the court said:

"Respondent, Meyer, contends that under Section 10802, R. S. 1919, the mayor and councilmen are each entitled to cast a vote for commissioner.

"Relator, Jones, contends the mayor and councilmen sit as one member of the county court and together have only one vote, and that, two members of the county court having voted for him, he thereby received a majority of the legal votes cast."

The court, in disposing of the contentions of the parties, said the following:

"It will be noted, that, on the assembling of the mayor, the members of the council, and members of the county court, the meeting is declared organized, with the presiding judge as the presiding officer and the county clerk as clerk of the meeting. They do not meet as officers of the city or as officers of the county. They meet as one body, for the sole purpose of appointing the commissioners.

* * * * *

"Cities of the fourth class may be divided into not less than two wards, with two councilmen from each ward, and cities under commission form of government may have two or more councilmen. From this relator argues that, if the mayor and each member of the council is entitled to one vote, it would give a city having a greater number of councilmen an advantage in the appointment of the commissioners.

"Relator assumes the mayor and councilmen act as officers of the city in appointing commissioners. As stated, the mayor and members of the council and members of the county court do not participate in the meeting as officers of either the city or county, but as representatives of the whole district for the sole purpose of appointing commissioners.

"The statute no more limits the mayor and members of the council to one vote than it limits the members of the county court to one vote. * * * * *

Each member of the meeting is authorized to participate in the appointment, and, absent a word in the statute to the contrary, we must hold each member of the meeting to have a vote."

From the above it is our opinion that the mayor of a city of the fourth class has a right to cast a vote for the appointment of a special road commissioner. It follows that the mayor is not limited to cast a vote only in case of a tie.

Yours very truly,

APPROVED:

James L. HornBostel
Assistant Attorney-General

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney-General