

**CITIES OF THE FOURTH CLASS:** Board of Aldermen may pass motions or resolutions when a majority of the quorum of the Board concur.

May 24, 1937.

Mr. Marvin E. Boisseau,  
City Attorney,  
University City, Missouri.



10

Dear Mr. Boisseau:

We wish to acknowledge your request for an opinion wherein you state as follows:

"A question has arisen with reference to a situation in University City, concerning which I would like to have your opinion.

"University City is a City of the Fourth Class and is divided into three Wards. The Board of Aldermen consists of two members from each Ward, or a total of six members.

"At the recent City election, one member of the Board of Aldermen, who had been elected Alderman for a term which does not expire until April 1938, was elected as Mayor. He has been sworn into office, thus leaving five members of the Board and necessitating a special election to fill out his unexpired term as Alderman.

"Under the Statutes relating to Cities of the Fourth Class, the affirmative vote of a majority of the entire Board is necessary for the passage of an ordinance, and it is my understanding that this Statute requires the votes of four members in order to make an ordinance valid, notwithstanding the fact that there are now only five members of the Board.

"The question concerning which I would like to have your opinion is this: Is it necessary to have the affirmative votes of four members of the Board to pass an ordinary motion or resolution, such, for instance, as a resolution calling a special election and designating the polling places and the judges and clerks therefor, or a resolution requiring the City Hall to be closed on the day of the special election and not requiring the City employees to perform their regular duties on such day?

"I may add that the Board has no rule of procedure stating what shall constitute a quorum or what vote shall be necessary for the passage of motions or resolutions, or bearing in any other manner upon the questions above presented."

19 R. C. L., Sec. 194, p. 895, distinguishes between an ordinance and a motion or resolution, as follows:

"A municipal ordinance or by-law is a regulation of a general, permanent nature enacted by the governing council of a municipal corporation. There are certain formalities usually required in the case of an ordinance or by-law to guard against too hasty and ill considered action, such as a number of successive readings on different days; if there are two chambers, submission to them on different days; and, in any event, the approval of the mayor. A resolution, or order as it is sometimes called, is an informal enactment of a temporary nature, providing for the disposition of a particular piece of the administrative business of a municipal corporation. It is not a law and there is in substance no difference between a resolution and a motion. A motion, resolution, or order may be enacted in both chambers in a few minutes and usually does not require the approval of the mayor."

The distinguishing characteristic is that an ordinance is of a permanent nature, while a resolution or motion is of a temporary nature.

Section 7016, R. S. Mo. 1929, provides the manner in which an ordinance is to be passed, in part, 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 board of aldermen shall vote for it \* \* \*."

With reference to the manner in which a resolution or motion may be passed, the statutes are silent, and we must therefore look to the common law rules as to quorums and majorities.

In Dillon on Municipal Corporations, (5th Ed.) Vol. 2, Sec. 521, p 845, we find the following statement:

"The common law rules as to quorums and majorities, established with reference to corporate bodies consisting of a definite number of corporators, have also, in general, been applied to the common council, or select governing body of our municipal corporations, where the matter is not specially regulated by the charter or statute. The quorum of a body has been defined to be that number of the body which, when assembled in their proper place, will enable them to transact their proper business, or in other words that number that makes the lawful body, and gives them the power to pass a law or ordinance. If there be no statutory restriction, a majority of a municipal council or board is a quorum, and a majority of a quorum may act. Thus, to use Mr. Dane's illustration, if the body consists of twelve common councilmen, seven is the least number that can constitute a valid meeting, though four of the seven (the seven being duly assembled and present) may act."

May 24, 1937.

And Section 524, page 850, illustrates as follows:

"So, if a board of village trustees consists of five members, and all, or four, are present, two can do no valid act, even though the others are disqualified by interest from voting, and therefore omit or decline to vote; their assenting to the measure voted for by the two will not make it valid. If three only were present, they would constitute a quorum; then the votes of two, being a majority of the quorum, would be valid; certainly so where the three are all competent to act."

In the case of *City of Batesville v. Ball*, 100 Ark. 296, 140 S. W. 712, citing *Dillon on Municipal Corporations*, we find this statement:

"In this case the form in which the council expressed its decision was called an ordinance, but it was in fact only a resolution, in the passage of which it was required only that a majority of the quorum of the council should concur. 1 *Dillon on Municipal Corporations*, Secs. 282-283."

From the foregoing, we are of the opinion that, there being no statute governing same, in order to pass a motion or resolution it is only necessary that a majority of the quorum present should concur. The Board of Aldermen consisting of six members, five being present, three members would constitute a majority of the quorum.

Respectfully submitted,

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

---

J. E. TAYLOR,  
(Acting) Attorney General.