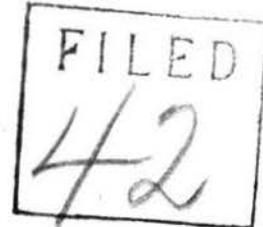


MUNICIPALITIES: Mayor may cast deciding vote, in cases of tie vote
of council in cities of Third Class.

May 19, 1938

5-23



Hon. Oscar T. Honey
Mayor
Chaffee, Missouri

Dear Mr. Honey:

This Department acknowledges your request for an
opinion under date of May 17, 1938, as follows:

"At our last Council meeting, a
peculiar situation arose that I would
like to have a ruling on from your
office.

Our Council consists of two alderman
from each of four wards, or a total of
eight alderman. An ordinance was voted
on by the Council in regular session and
three voted for the bill to become an
ordinance, three against, and the other
two, who were present, answered 'not
voting'.

The vote being a tie, as Mayor, and
under authority of Section 6820 of the
Missouri Statutes, as I understand it,
I voted 'yes' to untie the vote. After
this vote, I found under Section 6725,
pertaining to third class cities, that
the Mayor has no right to vote, but in
looking up several cases referred to,
it would seem I would have a right.

I am asking your office if you will
kindly give me your opinion on this
matter?"

Section 6800 R. S. Missouri 1929, relates to cities of the third class and provides that no bill shall become an ordinance unless on its final passage it receives a majority of the votes of the members elected to the council:

"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 reenacted 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."

You state that there was a tie vote, and that you voted "yes" to untie the vote. Your question is whether you had such authority.

Section 6725 R. S. Missouri 1929, relates also to cities of the third class and provides that the mayor presides over the council as president, and may cast the deciding vote in case of a tie when he is not an interested party:

"The mayor shall be president of the council and shall preside over same, but shall not vote except in case of a tie in said council, when he shall cast the deciding vote; but provided, however, that he shall have no such power to vote in

cases when he is an interested party. He shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and the state laws relating to such city are complied with."

It is a familiar rule of statutory construction that statutes relating to the same subject matter, or in pari materia, must be read and construed together, thus in the case of State vs. McCracken, 95 S.W. (2) 1239, l. c. 1241, we find the following statement by the St. Louis Court of Appeals:

"Statutes which are in pari materia should be read and construed together in order to keep all the provisions of the law on the same subject in harmony, so as to work out and accomplish the central idea and intent of the lawmaking branch of our state government, * * * *".

And in State vs. Brown, 105 S.W. (2) 909, l. c. 911, we find the further statement by the Supreme Court of Missouri En Banc, that in construing statutes in pari materia endeavor should be made, by tracing history of the legislation on the subject, to ascertain the intention of the legislature as follows:

"In construing statutes in pari materia, 'endeavor should be made, by tracing history of legislation on the subject, to ascertain the uniform and consistent purpose of the Legislature or to discover how the policy of the Legislature with reference to the subject matter has been changed or modified from time to time."

Tracing the history of the statutes in question we discover that Section 6800 R. S. Missouri 1929, appears verbatim in the R. S. of Missouri 1899 as Section 5832. Section 6725 R. S. Missouri 1929, appears in the R. S. of Missouri 1899, as Section 5757 and provides as follows:

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"The mayor shall be president of the council, but shall not vote; he shall have the superintending control of all the officers and affairs of the city; and shall take care that the ordinances of the city, and the state laws relating to such city, are complied with."

It is not until 1909 (Laws of Missouri 1909, page 289) that we find the statute as it is in its present form. It is interesting to note that it was passed with an emergency clause as follows:

"There being now no provision of law whereby the mayor may cast the deciding vote in cases where the council is evenly divided, and there now being a number of cities of the third class in this state in which the business of such cities is being seriously retarded and hindered by reason of the inability of the councilmen thereof to agree, and of the lack of power of the mayor to cast the deciding vote, creates an emergency within the meaning of the Constitution; therefore, this act shall (will) take effect and be in force from and after the date of its passage."

The above statement is clear evidence of the legislative intent, and hence we are of the opinion that in cases of a tie vote in the council of cities of the third class, the mayor may cast the deciding vote, provided he is not an interested party.

Respectfully submitted,

APPROVED:

MAX WASSERMAN,
Assistant Attorney General

J. E. TAYLOR
(Acting) Attorney General

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