

ELECTIONS:  
MAJORITY:

Majority of the elected members present  
constitutes a quorum when they pass on  
election contests.

June 22, 1939



Honorable L. C. Thedinger  
State Representative  
Jefferson City, Missouri

Dear Mr. Thedinger:

This is in reply to yours wherein you submitted a question of whether or not it requires a constitutional majority or a majority of the members present to pass on the election of a member of the House of Representatives.

Section 17 of Article IV of the Constitution provides in part as follows:

"Each house shall appoint its own officers; shall be sole judge of the qualifications, election and returns of its own members; may determine the rules of its own proceedings, except as herein provided; \* \* \* \* \*

It seems from this section of the Constitution that your question might be determined by a rule unless there is a constitutional provision prohibiting that body from making such a rule. This department is not informed on whether or not the House of Representatives has made any rule on this question.

Section 18 of Article IV of the Constitution provides as follows:

"A majority of the whole number of members of each house shall constitute a quorum to do business; but a smaller number may adjourn

from day to day, and may compel the attendance of absent members in such manner and under such penalties as each house may provide."

It would seem from this section that if a majority of the members of the House are present that the House could then do business which came before it. We find one limitation on this rule, however, in the Constitution which is Section 31 of the same article, that is, when a bill comes before that body before it can become a law it must have a majority vote of the members elected to the House. That section is as follows:

"No bill shall become a law unless on its final passage the vote be taken by yeas and nays, the names of the members voting for and against the same be entered on the journal, and a majority of the members elected to each house be recorded thereon as voting in its favor."

We find the rule of law applicable to the question similar to the one which you have submitted stated in Volume 59 Corpus Juris, page 92 at Section 66, which provides as follows:

"A session of the legislature may transact business so long as a quorum is present. Where a quorum is not shown to have been present to vote for the election of an officer, he fails to establish the right to such office, and one who receives less than a majority of the votes cast in filling a vacancy is not elected."

And Section 53 of the same volume at page 55 has this to say on the question of the determination of the election and qualifications of the members of the General Assembly:

"Under constitutional provisions to the effect that each house shall have power to judge of the qualifications and elections of its members, each branch of a state legislature has the sole power to judge of the election and qualification of its own members and may take such proof and incur such expenses as may be reasonably necessary for it to decide a contest of office. \* \* "

Since the Constitution provides that a majority of the members elected shall constitute a quorum to do business and since the Constitution also provides that the members of each House shall pass on the qualifications of the election of its members and since the Constitution only provides that the constitutional majority shall vote on a bill, then it would seem that if a majority of the members elected are present it would constitute a quorum to do business, then a majority of that quorum would have a right to pass on the election contest.

CONCLUSION.

From the foregoing it is the opinion of this department that if a majority of the members elected to the House of Representatives are present which constitutes a quorum of that body, then they may pass on the election contest which is before that body. The vote of the majority of those present will be decisive on the question.

Respectfully submitted

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APPROVED:

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