

MUNICIPAL CORPORATIONS: Mayor cannot vote to break tie-vote on a council committee or board of public works.

February 9, 1943.



Hon. Ben Ely
City Attorney
National Bank Building
Hannibal, Missouri

Dear Mr. Ely:

The Attorney-General wishes to acknowledge receipt of your letter of February 2, 1943, in which you request an opinion of this Department. Your request, omitting caption and signature, is as follows:

"I do not know whether it is your duty to give opinions to municipalities in the state. Our Mayor and Council have requested me to get an opinion from you, if possible, upon a question concerning our city government. I will therefore submit it to you, and if you find it possible to give an opinion, it will be of great assistance to the city.

"As you know, Hannibal is a city under special charter. The question has arisen as to whether the Mayor of the city is an exofficio member of committees of the City Council and of the Board of Public Works. It so happens that one of the council committees contains four members, and they are divided equally as to a certain matter now pending. The Board of Public Works, which also contains four members, is divided equally on another matter; and the question arises as to whether the Mayor has a right to break the tie in either instance. I may say that

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there is no provision in the city charter, the ordinances or the standing rules of the council, covering this situation."

We note in the last sentence in your letter you make the statement that there is no provision in the city charter, the ordinances or the standing rules of the council, covering the situation described in your letter. We will proceed on that premise in view of the fact that we do not have a copy of the Charter of Hannibal, and since we know that you are familiar with such set of laws.

In 46 C. J., page 1031, we find the following statement:

"The powers and authority of public officers are fixed and determined by the law."

We further find in the case of Lamar Township v. The City of Lamar, 261 Mo. 171, l. c. 189, the following language:

"Officers are creatures of the law whose duties are usually fully provided for by statute. * * * * * In fact, public policy requires that all officers be required to perform their duties within the strict limits of their legal authority."

Under such construction of the law we come to the conclusion that in order for the Mayor of your city to break a tie-vote in one of the committees or in the board of public works, that he must be given power so to do by statute.

We are familiar with the rule of law which provides that where certain duties are prescribed for an officer that he is permitted to assume other authority in order to carry out the acts and powers given to him under the statute. However, we do not feel that in this particular case such rule would apply. It strikes us that when the committees were

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formed in the Council and also on the Board of Public Works and when the number of four committeemen was specified, that the person or persons arriving at this number must have realized or could have foreseen that a situation such as you face at the present time was likely to arise. Still, there was never any provision made whereby the Mayor could vote on either one of these committees in order to break a tie.

There are decisions in this State which provide that the Mayor may vote to untie a tie-vote in the case of passage of ordinances. Such decisions are Mound City ex rel. v. Shields, 278 S. W. 798 and Grant City v. Salmon et al., 288 S. W. 88. However, these seem to be about the only cases which we can find that give the mayor power to untie a vote in the council. There is one other exception along this line, with reference to special road districts, but which would not affect this particular matter.

Therefore, it is the conclusion of this Department that the Mayor of the City of Hannibal, under the circumstances as related in your request, may not vote to break a tie in a committee of the City Council or in the Board of Public Works in the City of Hannibal, Missouri.

Yours very truly,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY MCKITTRICK
Attorney-General

JSP:EG