

OPINION NO. 197
Answered by Letter (Eichhorst)

May 6, 1965



The Honorable Harry E. Hatcher
State Senator, 28th District
Room 331A, Capitol Building
Jefferson City, Missouri

Dear Senator Hatcher:

This is in reply to your request for an opinion of this office inquiring as to the proper procedure to be followed where two candidates received a tie vote for the office of city marshal in a fourth class city.

Section 79.030, RSMo 1959, provides the manner in which the election for the elective officers of a city of the fourth class shall be held. This section reads as follows:

"A general election for the elective officers of each city of the fourth class shall be held on the first Tuesday in April next after the organization of such city under the provisions of this chapter, and every two years thereafter; and all city elections shall be held under the provisions of Chapter III, RSMo, excepting the provisions of section 111.280, and except that the judges of election in such city election shall perform all the duties of both the judges of election and clerks of election as prescribed in the state election laws, unless the city council shall provide for such clerks of election by ordinance. All duties specified in the state election laws to be performed by the constable or sheriff shall be performed by the city marshal in the city elections; and all duties specified in the state election laws to be performed by the county clerk shall be performed by the city clerk in the city elections. The polling places for all elections in cities of the fourth class and the judges therefor shall be selected and specified by the respective

boards of aldermen of such cities by resolution, ordinance or otherwise. The manner of making returns of such elections shall be prescribed by ordinance; provided, that city organizing under the provisions of this chapter may elect a mayor and such other officers as may be necessary to carry this chapter into effect, who shall hold office until the first Tuesday in April thereafter and until their successors are elected and qualified."

One of the Sections of Chapter 111, RSMo, incorporated by reference in Section 79.030, RSMo 1959, which is applicable to cities of the fourth class is Section 111.760, RSMo 1959, which pertains to the procedure where there is a tie vote for all offices not otherwise provided for by law. Since there is no statute relating to a tie vote for city marshal in a fourth class city, this Section is applicable to tie votes for the office of city marshal. This Section is as follows:

"If there shall be a tie of the votes given for any two of the candidates, except in cases otherwise provided by law, the clerk and his assistants appointed pursuant to section 111.710 casting up the number of votes, or a majority of them, shall issue their order to the sheriff of the county where the same may occur, directing him to issue his proclamation for holding an election agreeably to the provisions of this chapter; and in all cases of such special election, the clerk and assistants, or a majority of them, when they issue the order to the sheriff, shall, in such order, state the day on which such election shall be held, giving reasonable time for the same to be promulgated."

It is to be noted that Section 111.625, RSMo 1959, provides that certain provisions of Chapter 111 do not apply to fourth class city elections; Section 111.760, RSMo, is not included therein and thus, is applicable.

Thus, as provided in Section 79.030, the provisions of Section 111.760 shall be performed by the substituted officials designated in Section 79.030.

In addition, Section 79.030, RSMo 1959, provides in part that the "manner of making returns of such elections shall be prescribed by ordinance . . ." Thus, the body that casts up the votes in such

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City election under ordinance is the proper body to call the elections.

Attached is a copy of an opinion to The Honorable F. Neil Aschemeyer, dated April 7, 1960, relating to the election duties of city marshals in cities of the fourth class.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

Enclosure

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