

PROXY VOTING:
PUBLIC CORPORATIONS:
POULTRY BOARD:
BOARDS:
PUBLIC BOARDS; ETC.:

A member of the poultry board may not delegate or authorize another person to vote by proxy in his place but has a public duty to be present and vote in person in the interests of the public.

October 18, 1966

OPINION NO. 451

Mr. Charles W. McElyea, Secretary ✓
Missouri State Poultry Experiment Station
P. O. Box 109
Mountain Grove, Missouri 65711



Dear Mr. McElyea:

This opinion is written in response to your question whether members of the Board may vote by proxy vote at any meetings regularly called of the State Poultry Board.

Section 262.130, RSMo 1959, provides, in part, that the Governor shall appoint six members of the Poultry Board who are to be "selected with reference to their knowledge and practical experience in poultry culture; and, as far as possible, members representing the different poultry interests of the state."

It is evident from the statute (supra) that the legislature intended for the governor to appoint as board members specially qualified persons who have extensive knowledge and broad experience in the field of poultry culture to represent the different poultry interests as well as the public interest. Thus, the individuals appointed have imposed on them a special trust to be exercised in the public interest in a specialized field.

It is a recognized principle of municipal law that the legislative or discretionary functions of a governmental body may not be delegated. *City of St. Louis v. Franklin Bank*, 173 S.W.2d 837, 847; *Arkansas-Missouri Power Corporation v. City of Kennett*, 157 S.W.2d 782, 784. In 37 Am. Jur. "Municipal Corporations" Section 53, it states in part that:

"A municipal council cannot delegate to one of its own committees or to any other municipal officer the power to decide upon legislative matters properly resting in the judgment and discretion of the council, or, as held by some authorities, to one member of such governing body. * * *"

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The Missouri Supreme Court in *Lamar Township v. City of Lamar*, 261 Mo. 121, 189, said:

"Officers are creatures of the law, whose duties are usually fully provided for by statute. In a way they are agents but they are never general agents, in the sense that they are hampered by neither custom nor law and in the sense that they are absolutely free to follow their own volition. * * *"

In *State v. Kessler*, 136 Mo. App. 236, 240, the court said:

"* * * The Board of directors of the school district is a body clothed with authority to discharge such functions of a public nature as are expressly prescribed by statute. It can exercise no power not expressly conferred or fairly arising by necessary implication from those conferred. * * *"

See also *Corley v. Montgomery*, 46 S.W.2d 283, 286; *Cape Girardeau School District No. 63 v. Frye*, 225 S.W.2d 484, 488.

We recognize in 62 C.J.S., Section 400, p. 759 that it is stated:

"A municipal governing body must act under some rules of procedure. Rules prescribed by statute or charter must be followed, but, in the absence thereof, the body may adopt its own rules and regulations, and, in the absence of these, the general rules of parliamentary law prevail."

However, the above statement is limited in application to matters of procedure, not of substance and discretion as we believe the right to vote must be considered to be.

Examination of the statutes do not reveal any authority creating the right of one member to grant by proxy to another his authority to participate in Board proceedings. Indeed as a public representative appointed because of their special knowledge and experience in this area that they have a public obligation to be present and personally exercise their right to vote in the public interest.

We believe, as a matter of public policy, that since the members of the Board are chosen by the governor to represent the state and require special experts in poultry culture and that they represent the public interest in this special field, that the

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Board is charged with a public interest for the faithful performance of their duties. Conversely, the public is entitled to their judgment and discretion of each individual member of the Board upon whom authority to act has been confirmed by their appointment.

Inasmuch as there is no statute authorizing the Poultry Board to grant a proxy, we conclude that a proxy vote may not be given by a member of the poultry board to another person.

CONCLUSION

It is the opinion of this office that a member of the Poultry Board may not grant the right to participate in the proceedings of the Poultry Board by proxy, but such a board member has a public duty to be present and vote in person in the public interest.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Richard C. Ashby.

Very truly yours,


NORMAN H. ANDERSON
Attorney General