

VOTERS:
METROPOLITAN PLANNING
COMMISSION:
DIVISION OF COMMERCE
AND INDUSTRY:

Doctrine of "one-man, one-vote"
does not apply to positions that
are appointed.

March 23, 1967

OPINION NO. 136

Honorable William R. Royster
Representative, 8th District
House of Representatives
Capitol Building
Jefferson City, Missouri



Dear Representative Royster:

This opinion was prepared as a response to your inquiry whether the "one-man, one-vote" doctrine applies to the "Metropolitan Planning Commission-Kansas City Region", so that Kansas City would have to be proportionately represented (by population) on the governing board of said commission.

To arrive at a valid conclusion, we must first examine and understand the nature of the Metropolitan Planning Commission as constituted under the agreement made and entered into by the several parties to this instrument and the by-laws that were enacted to govern its operation. Primarily, we must determine the genesis of this commission, its powers, and its authority.

The "Metropolitan Planning Commission-Kansas City Region" is a mutual association of several political entities of two states (Missouri and Kansas) having a contractual conception and its appointive members or representatives operate within the framework spelled out by the contract of origin.

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The sole purpose of this organization is to develop regional plans for the industrial development of the total economic area party to this agreement. Under the terms of Article 3 of the Agreement, the members of the Commission are appointed. The legal authority for this action is found in Article VI, Section 16, Missouri Constitution and Section 70.220, 70.230, 70.250, 70.260, 70.270, 70.290 and 70.300 RSMo., 1959. The agreement does not contain nor the Commission purport to exercise any legislative authority as this term is commonly understood.

It is the opinion of this office that the so-called doctrine of "one-man, one-vote" is applicable only to elective offices. We have found no case law extending this doctrine of "one-man, one-vote" beyond the specific area involving elective offices. This holding is supported by the recent case of *Armentrout et al vs. Schooler* (Mo.-sup) _____ S.W. 2d _____ decided December 14, 1966 by the Missouri Supreme Court. We quote here extensively from this opinion as follows:

"It is judicially admitted and established by the answer of the city and its defending officials that there is a gross malapportionment of population in the division of the city into wards, from which it necessarily follows that there is a debasement or dilution of the weight of the votes of citizens living in three of the four wards.

"Beginning with *Baker v. Carr*, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed. 2d 663, and followed by *Gray v. Sanders*, 372 U.S. 368, 83 S.Ct. 801, 9 L.Ed. 2d 821; *Wesberry v. Sanders*, 376 U.S. 1, 84 S.Ct. 526, 11 L.Ed. 2d 481; *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362, 12 L.Ed. 2d 506; *WMCA, Inc. v. Lomenzo*, 377 U.S. 633, 84 S.Ct. 1418, 12 L.Ed. 2d 568; *Maryland Committee for Fair Representation v. Tawes*, 377 U.S. 656, 84 S.Ct. 1429, 12 L.Ed. 2d 595; *Davis v. Mann*, 377 U.S. 678, 84 S.Ct. 1441, 12 L.Ed. 2d 609; *Roman v. Sincock*, 377 U.S. 695; 84 S.Ct. 1449, 12 L.Ed. 2d 620; *Lucas v. Forty-Fourth General Assembly of State of Colorado*, 377 U.S. 713, 84 S.Ct. 1459, 12 L.Ed. 2d 632; *Hearne v. Smylie*, 378 U.S. 563, 84 S.Ct. 1917, 12 L.Ed. 2d 1036;

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Pinney v. Butterworth, 378 U.S. 564, 84 S.Ct. 1918, 12 L.Ed. 2d 1037; and Hill v. Davis, 378 U.S. 565, 84 S.Ct. 1918, 12 L.Ed. 2d 1037, the Supreme Court of the United States has established these principles with respect to apportionment of representatives elected on a state level: Legislative reapportionment is a justiciable issue upon which an aggrieved citizen whose right to vote has been impaired may resort to the courts for relief.

"Statutes which provide for the selection of legislators upon the basis of unequal apportionment of the population in the respective legislative districts may be declared unconstitutional as in violation of the equal protection clause of the fourteenth amendment to the federal constitution. Seats in the legislative branch of state governments must be apportioned substantially on the basis of population; equal representation for equal numbers of people."

* * * * *

"We have found no case in which the question has been passed on by the Supreme Court of the United States but lower federal courts and several state courts have sanctioned the penetration of this principle to levels of government subordinate to the level of state legislatures.

Bailey v. Jones, S.Dak. Sup., 139 N.W.2d 385 (board of county commissioners); State ex rel. Sonneborn v. Sylvester, 26 Wis. 2d 43, 132 N.W.2d 249 (county board of supervisors); Ellis v. Mayor and City Council of Baltimore, 4 Cir., 352 F.2d 123 (city council); Seaman v. Fedourich, 16 N.Y.2d 94, 262 N.Y.S. 2d 444, 209 N.E. 2d 778 (city council); Goldstein v. Rockefeller, 45 Misc. 2d 778, 257 N.Y.S. 2d 994 (county board of supervisors); Bianchi v. Griffing, 238 F. Supp. 997 (county board of supervisors);

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Griffin v. Board of Supervisors of Monterey County (1963), 33 Cal. Rptr. 101, 384 P.2d 421; Henderson v. Superior Court of Marin County (1964), 37 Cal. Rptr. 438, 390 P.2d 206; Miller v. Board of Supervisors of Santa Clara County (1964), 37 Cal. Rptr. 440, 390 P.2d 208; State ex rel. Scott v. Masterson (1962), 173 Ohio St. 402, 183 N.E.2d 376 (city council). See Weinstein, The Effect of the Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government, 65 Columbia Law Review 21, 23-31; and notes in The George Washington Law Review, Vol. 33, No. 5, June 1965, p. 1132; University of Cincinnati Law Review, Vol. 34, No. 3, Summer 1965, p. 397.

"Section 1 of the Fourteenth Amendment to the Constitution of the United States provides, among other things, that 'No State shall make or enforce any law which shall * * * deny to any person within its jurisdiction the equal protection of the laws.'

"The following provisions are from the Constitution of Missouri, 1945: Art. I, § I, provides 'That all political power is vested in and derived from the people; that all government of right originates from the people, is founded upon their will only, and is instituted solely for the good of the whole'; Art. I, § 2: '* * *that all persons are created equal and are entitled to equal rights and opportunity under the law;* * *' and Art. I, § 25; 'That all elections shall be free and open^c; and no power, civil or military, shall at any time interfere to prevent the free exercise of the right of suffrage.'

"The city council in a city of the third class, elected by the people to represent the inhabitants, is primarily a legislative body exercising general governmental functions."

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"The Fourteenth Amendment to the Constitution of the United States applies to the State of Missouri and to every governmental creature of the state to which it has delegated powers of government. A city of the third class is a creature of the state and its legislative body, the city council, exercises the legislative powers delegated to it by the General Assembly. The State of Missouri may exercise its legislative powers only through a legislative body apportioned on a population basis, and it logically follows that the agency, arm or instrumentality to which the state delegates some of its powers should be governed by the same principle. Seaman v. Fedourich, supra, 209 N.E.2d, l.c. 782 [4]; Brouwer v. Bronkema, No. 1855, Cir. Ct. Kent County, Michigan, September 11, 1964.

"Since the members of the City Council of the City of Louisiana are elected by the people in a representative capacity, and perform primarily legislative functions importantly affecting the people, the wards from which they are elected must be substantially equal in population, under the equal protection of the laws clauses of the constitutions of the United States and of the State of Missouri."

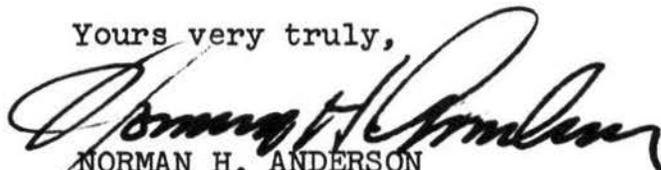
As we have stated above, we find the "Metropolitan Planning Commission-Kansas City Region" and the articles of its organization does not purport to elect any of its members, therefore, the doctrine of "one-man, one-vote" would not apply.

CONCLUSION

It is the opinion of this office that the "one-man, one-vote" doctrine does not apply to the "Metropolitan Planning Commission-Kansas City Region" inasmuch as its organization articles provide for the appointment of the members of the Commission.

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

Yours very truly,


NORMAN H. ANDERSON
Attorney General