

April 9, 1973

OPINION LETTER NO. 164
Answer by Letter - Klaffenbach

Honorable Jewel Kennedy
State Representative, District 42
Room 202I Capitol Building
Jefferson City, Missouri 65101



Dear Mrs. Kennedy:

This letter is in answer to your opinion request in which you ask:

"Though a board of aldermen, consisting of 10 members, is short a member due to resignation or death, is a constitutional majority of 6 votes required to pass an ordinance?"

You also state that:

"For a period of time in February, 1973 the Raytown City Council was short a member. Subsequently an appointment filled this vacancy.

"The same problem now exists due to a council member being elected mayor on April 3, 1973. A special election will be held to fill this seat for a one year period. With a council of nine, is five a legal majority?"

Your question involves an interpretation of the provisions of Section 79.130, RSMo, respecting the manner in which ordinances are passed in fourth class cities. That section provides in part:

Honorable Jewel Kennedy

". . . No ordinance shall be passed except by bill, and no bill shall become an ordinance unless on its final passage a majority of the members elected to the board of aldermen shall vote for it, and . . ."

In our Opinion No. 88, dated April 10, 1946, to Tindel, we held a state constitutional provision providing that a bill must be passed by a majority vote of all members elected to the House of Representatives and a majority of all members elected to the Senate, requires a majority vote of all members that have been elected to the Senate and House of Representatives and a subsequent vacancy does not affect the number that is required for the passage of such a bill.

We believe that the same rule applies in the premises.

See McQuillin, Municipal Corporations, §13.27b; McLean v. City of East St. Louis, 78 N.E. 815 (Ill. 1906); Pollasky v. Schmidt, 87 N.W. 1030 (Mich. 1901); 43 A.L.R.2d 702.

Therefore, where the board of aldermen consists of ten members a majority for passage of a bill consists of six members even though there is a vacancy.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 88
4/10/46, Tindel