

July 6, 1976

OPINION LETTER NO. 130
Answer by Letter - Klaffenbach

Honorable John W. Buechner
State Representative, 94th District
14 Ponca Trail
Kirkwood, Missouri 63122



Dear Representative Buechner:

This letter is in response to your question asking:

"Can the Mayor of a fourth class city in the State of Missouri cast a vote to break a tie of the Board of Aldermen thereby enabling the legal passage of an ordinance?"

The confusion arises out of the provisions of Sections 79.120 and 79.130, RSMo, with respect to fourth class cities. Section 79.120 states that the mayor shall have a seat in and preside over the board of aldermen, but shall not vote on any question except in case of a tie. On the other hand, Section 79.130 provides that 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. We believe that the question has been resolved by the Kansas City Court of Appeals' decision in the case of Mound City ex rel. Reinert Bros. Const. Co. v. Shields, 278 S.W. 798 (1926). In that case the court considered both of the sections involved and determined that Section 79.120 controlled and the mayor did have the right to cast the deciding vote on an ordinance in case of a tie.

Very truly yours,

JOHN C. DANFORTH
Attorney General