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OPINION LETTER NO. 139

The Honorable Jerry E. McBride
State Representative, 130th District
Room 414B, Capitol Building
Jefferson City, Missouri 65101



Dear Representative McBride:

This letter is in response to your questions asking:

1. In a third class city in Missouri when an election is held by the city council members to fill the position of mayor pro tem can the election be conducted by secret ballot of the council members when only the final tally is announced and not the specific vote of each council member?
2. In case of a tie, is it permissible under state law for the mayor then to vote to break the tie?

Section 77.070, RSMo 1978, provides in pertinent part:

[T]he council shall elect one of its members president pro tem, who shall hold his office for the term of one year, and who, in the absence of the mayor, shall preside at the meetings of the council; . . .

Section 77.250, RSMo 1978, provides in pertinent part:

The mayor shall be president of the council and shall preside over same, but shall not vote except in case of a tie in said council, when he shall cast the deciding vote; but provided, however, that he shall have no such power to vote in cases when he is an interested party.

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Section 610.015, RSMo 1978, which is part of the Sunshine Law provides:

Except as provided in section 610.025, and except as otherwise provided by law, all public votes shall be recorded, and if a roll call is taken, as to attribute each 'yea' and 'nay' vote, or abstinence if not voting, to the name of the individual member of the public governmental body, and all public meetings shall be open to the public and public votes and public records shall be open to the public for inspection and duplication. (Emphasis added.)

In answer to your first question, it is well established that the Sunshine Law is applicable to cities. State ex rel. Board of Public Utilities of the City of Springfield v. Crow, 592 S.W.2d 285, 288[2] (Mo.App., S.D. 1979). Because there is no exception provided in § 610.025, RSMo, or otherwise, an election by city council members to fill the position of president pro tem comes within the provisions of §§ 610.010, et seq., RSMo, and the meeting, vote and record must be open to the public.

There is no requirement in § 77.070 that the vote of each member be attributed to the member. Section 610.015 only requires a record of each member's vote if a roll call is taken. Therefore, it is arguable that, in such an election, secret ballots are not prohibited and only the final vote need be recorded and open to the public. It is our view, however, that the definition of "public vote", § 610.010(5) as "any vote cast at any public meeting of any public governmental body" requires the conclusion that secret ballots are not permitted at meetings which are required to be open under the Sunshine Law.

In answer to your second question, it seems clear from the provisions of § 77.250 that the mayor is the president of the council and has the right to vote in case of a tie, except in cases where he is an interested party. It is our view that the provisions of § 77.250 apply to elections for president pro tem under § 77.070.

Very truly yours,



JOHN ASHCROFT
Attorney General