

ELECTIONS:

PROXIES:

COUNTY COMMITTEES:

Proxies can be voted in county committee meeting. Majority of committee members necessary to constitute quorum to transact business.

(C O P Y)

August 25, 1938

Filed: #18

Honorable J. Carrol Combs
Prosecuting Attorney
Barton County
Lamar, Missouri



Dear Mr. Combs:

We have received your letter of August 16 which reads as follows:

"There was considerable discussion at the meeting of the county committee, under Section 10280 of the Revised Statutes of Missouri for 1929, as to whether or not absent members of the committee could vote by proxy which had been duly executed and delivered to an individual to be acted upon at the meeting according to the dictates of the signer of the proxy.

"At the meeting there were 13 members of the committee present. At the primary there were 30 committeemen and committeewomen elected by the Republican voters. There were at least nine proxies of absent members to be voted at the meeting which the temporary chairman at the meeting would not recognize.

"I would like to have the opinion of your office as to whether or not absent committeemen or committeewomen can vote at the organization meeting by proxy and if so,

if the election of the county chairman by the members present, after the proxies had been ignored, would be a legal organization of the county committee; that is, the election of the chairman by a majority of those present, it being an evident fact that all of the proxies if they had been allowed to have been voted would have been for the losing candidates. * * * * *

"P.S. I should state that the party holding the proxies left the meeting before they were offered and never offered the proxies as votes at the meeting."

The first question you raise is whether or not absent members of the county committee can vote by proxy. This office has previously ruled on this question. In an opinion dated August 17, 1936, addressed to the Honorable Joe Crain, Prosecuting Attorney of Christian County, Missouri, we said:

"Section 10280, R. S. Mo. 1929 relates to the organization of the county committee after the August primary. It is our opinion that it is the duty of the committee, after being duly assembled and organized, to determine whether or not proxies shall be recognized; in other words, by Section 10280, it is the duty of the County Chairman to call the committee for the purpose of organization, and if proxies of the various members of the committee have been recognized in the past, then proxies for said meeting may be recognized. Once the Committee has met and organized, it can determine its future course with reference to proxies. Unless it determines that it will not recognize proxies, then we think such proxies may be accepted. We think the best course to pursue is for the members present to determine whether or not proxies will be recognized when the meeting is called."

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In the postscript of your letter you state that no proxy was offered at the meeting. Consequently the question is not now presented as to whether any such proxy was properly refused or accepted. Also we gather from your letter that the committee had never determined whether or not proxies should be recognized. Therefore, all we can say is that if proxies had been submitted and if the committee had either determined to accept the same in advance or if no action with respect thereto had been taken at all, then it would have been proper for any such proxies to have been accepted and voted.

In connection with your second question you state that at the primary thirty committeemen and committeewomen were elected by the Republican voters in Barton County; that at the meeting there were thirteen members of the committee present and that no proxies were submitted for consideration. Consequently there were only thirteen possible votes at the meeting. Your question then is whether "the election of the county chairman by the members present * * would be a legal organization of the county committee; that is the election of the chairman by a majority of those present * * * *." In other words, is it necessary to have a majority of the committee, that is at least sixteen out of the thirty members present, in order to transact business.

Section 10280 R. S. Mo. 1929 is the only statute relative to the meeting and organization of such a county committee. This statute reads as follows:

"The county committee, or city committee, as the case may be, shall be composed of the committeemen and committeewomen elected in the several townships, or voting districts, at the August primary next preceding, and shall meet at the county seat of the several counties of this state, and at such place in any city not within a county, as the chairman of the then city committee may designate, on the third Tuesday in August of the year in which the primary election is held, and organize by the election

of one of its members as chairman, and one of its members as vice-chairman, one of whom shall be a woman, and a secretary and a treasurer, one of whom shall be a woman, but who may or may not be members of the committee. (Laws 1923, P. 197, sec. 2.)"

It will be observed that the Legislature has not prescribed what number of the governing body shall constitute a quorum for the transaction of business. In the case of State ex rel. Kiel v. Riechmann, 239 Mo. 81 there **was** a contest between two contending factions of the **Republican** City Committee of the City of St. Louis. It was contended that certain amendments to the rules of the committee **were** improperly adopted because they were adopted by less than a majority vote of the committee. In this connection the court said:

"The statutes of this State authorizes the city committee to pass rules for its own government, but does not undertake to say by what number of votes such rules should be passed. In such case the general rule of law is that a bare majority will suffice. That was the common-law rule. * * * * *

"Lastly it is urged under this point that the amendments were not passed by even a majority of the members. The law creating the city committee contemplates that it may adopt new rules for its own government, but, as said above, does not say what proportion of the committee shall be required to pass such rules. Under that **state** of facts it is clear under the general rule of law that a **majority** can act. Under the law such a majority constituted a quorum for the transaction of business.

"The rule is further stated in 29 Cyc., p. 1688, thus: 'Where a quorum is not fixed by the Constitution or statute creating a

deliberative body, consisting of a definite number, the general rule is that a quorum is a majority of all the members of the body. * * * *'.

"The rule seems to be that, unless there be some specific law to the contrary, a majority of a given body has the right to transact all business which the entire body is authorized to do. And not only so but that a majority vote of those present and voting (there being a majority participating) can do all the things which could be done by the entire body. This was the common-law rule, and is only changed by some express provision. The theory is that the majority is the body itself for the transaction of business. * * * *'.

"Going now to the case at bar, we must hold that inasmuch as the statutes of this State have not prescribed what number shall constitute a quorum for the transaction of business by this committee, the common law fixes a quorum of such committee at a majority of its members. Such quorum has the full power of the whole committee, and for the purposes of transacting business is in law the committee itself, and if in the transaction of any business a majority of that quorum votes for a measure such measure is as valid and binding as if adopted by the entire vote of the committee."

Conclusion

We conclude, therefore, that in the absence of a rule to the contrary duly passed by a county committee at which a quorum was present, proxies may be accepted; that since no proxies were offered at the particular meeting of the committee and since there were only thirteen actual members of the committee present and voting out of a total of thirty committeemen and committeewomen

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elected by the voters that a quorum was not present for the transaction of any business. Since the statute does not prescribe what number of the committee shall constitute a quorum for the transaction of business, the common-law rule prevails, which is that a quorum of such committee must constitute a majority of its members. In this particular case sixteen members would be the minimum in order to constitute such a majority. Since only thirteen members were present, there was not a quorum for the transaction of any business.

Respectfully submitted

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APPROVED:

J. E. TAYLOR
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JFA/w