MUNICIPAL CORPORATIONS:
FOURTH CLASS CITIES:

Ordinances may be passed without being read three times. Does not require unanimous vote to suspend the rules.

September 8, 1938

FILED
35

Hon. Chas. H. Green, Attorney
Osceola
Missouri

Note attached Court of Appeals opinion. (534 SW 2 486)

Dear Sir:

This acknowledges receipt of your inquiry, which is as follows:

> "The City of Osceola is contemplating building a municipal light plant, for which bonds are to be issued in the sum of $42000 plus a grant from the Government through the PWA.
>
> "At the meeting held Friday, September 2, an Ordinance was passed providing for the election and the issuance of bonds. At this meeting, one member of the Council voted against the Ordinance and voted against suspending the rules so that the Ordinance could be put up for second and third meetings in one night, and we are wondering if this procedure is correct or whether it takes a unanimous vote of the members present in order that the rules may be suspended. We will appreciate it if you will give us your opinion on this matter."

Replying thereto, we refer you to the statute relative to the passage of ordinances by cities of the fourth class, of which the City of Osceola is one.

Section 7016, R. S. 1929, granting power to

such cities to enact ordinances, in part, provides:

> "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 the ayes and nays be entered on the journal; and all bills shall be read three times before their final passage."

The above section of the statutes has been construed by the courts in this state and it is held that the latter portion thereof, to-wit; "and all bills shall be read three times before their final passage," is not mandatory, but is merely directory, and that failure to literally comply with the same will not invalidate the ordinance.

In the case of Water Co. v. City of Aurora, 129 Mo. 540, the Supreme Court of this state had before it this same question of whether a city ordinance was valid where it was not read three times. In passing on it the Court said, page 577:

> "Nor does it invalidate that ordinance because, as it is claimed, it was not read three times before its final passage. Section 1597, Revised Statutes, 1889, provides: '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 elect shall vote therefor, and the yeas and nays entered on the journal; and all bills shall be read three times

> before their final passage.' It is to be observed that the above section does not declare a sentence of nullity against a bill which is not read three times before its final passage; such declaration is altogether confined to the preceding clauses of the section, and does not apply to the last clause. Similar views were held in State ex rel. v. Mead, 71 Mo. 266, and Barber Asphalt Pav. Co. v. Hunt, 100 Mo. 22. There are authorities to the contrary, but we shall adhere to our own decisions."

The Aurora case, supra, was approvingly cited in the case of City Trust Company v. Crockett, 309 Mo. 683, and the court there said, page 712:

> "Under the ruling in Water Co. v. Aurora, 129 Mo. 540, and the authorities there cited, and in consideration of there being no provision in the charter of a city of the third class forbidding or regulating special meetings of the council, or, otherwise than as in section 8284, prescribing the conditions to be complied with in passing ordinances, it must be held that there was no authority forbidding the council passing the ordinances at the special meeting. It is not contended that the record fails to show the bill was read the first, second and third time, nor, that a majority of the members of the council did not vote therefor, nor that the ayes and nays were not entered

> upon the journal. The record showed compliance with those requirements. There being no statute forbidding the passage of the ordinance at a special meeting, the right to do so existed."

The Aurora case, supra, was also approvingly cited by the Federal Court in the case of Monett Electric, Power and Ice Co. v. Incorporated City of Monett, 186 F. 360.

In the Aurora case the question was squarely before the court as to the validity of the ordinance and it was there held that the fact that it was not read three times did not invalidate it.

If the provision as to reading it three times was directory, as the Supreme Court there held, it would appear that the fact that a unanimous vote was not cast for suspending the rules and reading it three times would not invalidate the ordinance.

Conclusion

It is our opinion that the fact that the record of a city of the fourth class does not show that all of the aldermen voted for suspension of the rules and reading the first, second and third time, all at the same meeting, does not invalidate the ordinance so passed. This opinion presupposes that all other requirements have been complied with and

the sole question under discussion here is whether unanimous consent is required to suspend the rules of the Council and pass at the same session the ordinance by reading it the first, second and third times on the same night.

Very truly yours

Drake Watson
Assistant Attorney General

APPROVED

J. E. Taylor
(Acting) Attorney General