

Cities of the Third Class:
Vacancies in Council:

Mode of filling vacancy in Council
of city of third class.

February 16, 1942

2-73

Hon. Fred E. Mueller
Associate Prosecuting Attorney
St. Louis County
Clayton, Missouri



Dear Mr. Mueller:

This is in reply to your letter of recent date, wherein you request an opinion from this department on the following statement of facts:

"A question has arisen in this County relative to a situation which exists in the City of Maplewood. The City of Maplewood has a population of more than 12,000 and less than 20,000 inhabitants and is incorporated under the alternative form of government as a City of the Third Class and is governed by a council consisting of the Mayor and three councilmen. Recently one of the councilmen died and the remaining members are desirous of filling the vacancy by the appointment of some person to serve during the balance of the unexpired term.

"The situation requires an interpretation of Sections 7059 and 7061 of the Revised Statutes of Missouri, 1939, as to whether it will require a vote of three members of the council to appoint the new councilman or whether a majority which consists of two members can fill the vacancy by their vote."

That part of Section 7059, which refers to your question, is as follows:

"In every such city there shall be elected at the first regular municipal election held after the taking effect of this section, and every four years thereafter, a mayor and two councilmen in cities having a population of three thousand and less than twelve thousand, and a mayor and three councilmen in cities having a population of twelve thousand and less than twenty thousand, and a mayor and four councilmen in cities having a population of twenty thousand and less than thirty thousand. If any vacancy occurs in such office, the remaining members of said council shall appoint a person to fill such vacancy during the balance of the unexpired term. * * * *"

That part of section 7061, which refers to your question is as follows:

"Every city having a population of twenty thousand and less than thirty thousand shall be governed by a council consisting of the mayor and four councilmen, and every city having a population of twelve thousand and less than twenty thousand shall be governed by a council consisting of the mayor and three councilmen, and every city having a population of three thousand and less than twelve thousand shall be governed by a council consisting of the mayor and two councilmen, chosen as provided in this article, each of whom shall have the right to vote on all questions coming before the council. In cities having four councilmen, three members of the council shall constitute a quorum, and in cities having three councilmen three members shall constitute a quorum, and in cities having two councilmen two members of the council shall constitute a quorum, and in cities having four councilmen the affirmative vote of three members, and in cities having three councilmen the affirmative vote of three members, and in cities having two councilmen the affirmative vote of two members of the council shall be nec-

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essary to adopt any motion, resolution or ordinance, or pass any measure unless a greater number is provided for in this article.* * * *"

This Section appears to require three members of the council in cities of the class of Maplewood, which is a third class city to constitute a quorum and the affirmative vote of such three members of the council is required to adopt any motion, resolution or ordinance, unless a greater number is required by the article.

Said section 7059 provides that appointment to fill a vacancy shall be made by the remaining members of the council. This would mean that two councilmen in such city could fill a vacancy. The two sections may seem to be in conflict, because one provides that two members may fill a vacancy on a council in such cities, while the other requires three members to be present to constitute a quorum and the affirmative vote of all three of them shall be necessary to pass a motion, resolution or ordinance.

The following rule of statutory construction should be applied here. State v. Wipke 133 S. W. (2d) 354, 356:

"It is a cardinal rule of construction that every word, clause, sentence and section of an act must be given some meaning unless it is in conflict with the legislative intent."

Applying this rule, here we must give both of these sections some meaning if possible.

In the case of Johnson v. Kruckemeyer et al., 29 S.W. (2d) 730, 732, the court in construing two sections of the Workmen's Compensation Act, which might appear to be somewhat in conflict said:

"Nothing in subsection (j) militates against this view, but, if anything, it adds to the force of the conclusion which we have reached. As we read them, the two sections are not contradictory, and, in so far as they deal with different features of the same general

subject-matter, it is our duty to read them together, and to harmonize them if possible."

These rules are quite applicable here because we think both of the sections under consideration deal with the same subject matter, that is with cities of a certain class; but the sections, each, refer to different phases of this one subject.

Said Section 7059, deals with the subject of the election of the mayor and councilmen and the filling of a vacancy thereon, in such cities. This might be termed as a special statute pertaining to such cities.

Section 7061 might be termed as a general statute dealing with the governing of such cities. It will be noted that this section refers to the passage of motions, resolutions and ordinances and requires the vote of three members of the council of such cities to pass the measure.

In the case of Tevis et al. v. Foley 30 S. W. (2d) 68, the court in discussing the rule of construction of special and general statutes, said at l. c. 69 paragraph three to five:

"Appellant contends that section 10629, Rev. St. 1919, which respondents invoke as authority for dismissing the appeal in this case, did not take away the right of appeal guaranteed by the general statute governing appeals. This general statute, among other things, provides that any party to a suit aggrieved by any judgment of any circuit court in any civil cause from which an appeal is not prohibited by the Constitution, may take his appeal to a court having appellate jurisdiction. Section 1469 R. S. 1919.

"Section 1469 is a general statute, and deals with the right of appeal in comprehensive terms, while section 10629 is a later and special statute and deals with the question of appeal in certain specified cases of which the case at bar is one. In this situation the rule of construction is that, where there is one statute dealing with a subject in general and comprehensive

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terms and another dealing with a part of the same subject in a more minute and definite way, the two should be read together and harmonized, if possible, with a view to giving effect to a consistent legislative policy; but to the extent of any necessary repugnancy between them, the special will prevail over the general statute. Where the special statute is later, it will be regarded as an exception to, or qualification of, the prior general one; and where the general act is later, the special will be construed as remaining an exception to its terms, unless it is repealed in express words or by necessary implication."

Applying these rules of construction to the set of facts which you have submitted, we think the provisions of said section 7059 would be applicable to the appointment of a councilman to fill a vacancy in such cities.

CONCLUSION

It is therefore the opinion of this department that when a vacancy occurs in the office of councilman on the city council in cities of the third class, operating under a special charter and containing a population between twelve thousand and twenty thousand, then such vacancy shall be filled by appointment made by the remaining members of the council.

Respectfully submitted

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APPROVED:

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VB:AW