



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

February 21, 1978

ATTORNEY GENERAL OPINION NO. 78- 82

Mr. Jerry L. Donnelly
Attorney at Law
1035 Vermont Street
Lawrence, Kansas 66044

Re: Law Libraries--Establishment--Majority Vote Required

Synopsis: In order to authorize the establishment of a county law library under K.S.A. 19-1319, the question must be approved by a majority of all the attorneys residing within the county and admitted to practice in the Kansas courts, and approval merely by a majority of those voting, which falls short of a majority of all those eligible to vote, does not authorize the establishment of a county law library under that section.

* * *

Dear Mr. Donnelly:

You inquire concerning a recent election upon the question of establishing a county law library in Douglas County, Kansas. The question whether a county law library should be established pursuant to K.S.A. 19-1319 through -1325 was submitted to the eligible attorneys of the county by a ballot distributed on January 5, 1978, by the clerk of the district court, after taking an enumeration of the attorneys residing within the county and admitted to practice in the courts of this state. The enumeration disclosed 152 eligible attorneys. The certificate of the clerk reflecting the results of the canvass of that election discloses that 67 of the eligible voters voted for the establishment of a county law library, 28 voted against the proposition, three ballots were returned because the addressee was not found, one ballot was returned without a certificate, and 53 ballots were not returned at all.

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K.S.A. 19-1319 provides in pertinent part thus:

"Any county of this state may establish a county law library, under the provisions of and subject to the qualifications of this act.

No county law library shall be established under the provisions of this act until a majority of the attorneys residing within such county and admitted to practice before the bar in Kansas shall elect to do so. . . .
[Emphasis supplied.]

Obviously, a majority of those casting ballots approved the establishment of the proposed county law library. However, that majority, 67, does not constitute a "majority of the attorneys residing within such county and admitted to practice" before the Kansas courts, and without the approval of *that* majority, the establishment of the library is not authorized. At 26 Am.Jur.2d, *Elections*, § 310, the writer states thus:

"In the absence of a statutory provision to the contrary, voters not attending the election or not voting on the matter submitted are presumed to assent to the expressed will of those attending and voting and are not to be taken into consideration in determining the result. . . . Thus, a law requiring a question to be decided or an officer to be elected by the voters of the majority or other proportion of the voters does not require that the majority or other proportion of all the persons entitled to vote actually vote affirmatively, but only that the result be decided by a majority or other specified proportion of the votes cast." [Footnotes omitted.]

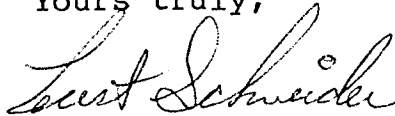
However, the writer cites *Clayton v. City of Hill City*, 111 Kan. 595, 207 Pac. 770 (1922) as supporting a contrary view. Construing a statutory provision that "no bonds shall be issued except upon a vote of a majority of the qualified electors of such city," the court held that approval of a majority of all the qualified electors was required:

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"Where a popular vote is required to authorize certain action a majority (or other stated proportion) of those actually voting is regarded as sufficient for the purpose, unless the statute affirmatively and clearly shows a different intention. But we regard the language quoted as too explicit to admit of any other construction than that the bonds referred to shall not be issued without the consent, expressed by voting at the election, of a majority of all the persons lawfully entitled to vote thereat. . . . Nearly all the many Kansas statutes regarding special elections provide in so many words that the result shall be determined by a majority (or other proportion) of the votes cast. A provision that a majority of the qualified electors shall be necessary is so unusual as clearly to indicate a purpose to apply a different rule." 111 Kan. at 595-596.

The underscored language quoted above from K.S.A. 19-1319 requires approval by a majority of the attorneys residing within the county and admitted to the bar, and not merely a majority of those voting upon the question. Following *Clayton v. City of Hill City, supra*, it is my view that the affirmative vote of 67 persons of a total of 152 persons eligible to vote upon the question does not constitute a majority required by K.S.A. 19-1319 to authorize establishment of a county law library under that provision.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj