



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 82- 43

Mr. Warren D. Andreas
Winfield City Attorney
200 East 9th Avenue
P. O. Box 646
Winfield, Kansas 67156

Re: Cities and Municipalities -- City Councils --
Members Abstaining from Voting

Synopsis: If a quorum of a municipal council is present and a majority of the members voting vote in favor of a particular matter, abstentions from voting are to be counted as acquiescence with the votes of the majority, and the action will bind the body. Abstentions from voting may not be counted as acquiescence where there is a tie vote and the proposition fails for lack of a majority voting in favor thereof. Cited herein: K.S.A. 1981 Supp. 72-8205.

* * *

Dear Mr. Andreas:

You have requested an opinion regarding the effect of commissioners abstaining from voting in two certain factual situations. First, you state that the City Planning Commission is comprised of nine members. On one occasion, five members were present which constituted a quorum. On a particular vote, two members voted in favor of a recommendation and the other three members abstained. You ask whether less than a majority of a quorum may bind the group and what effect the abstentions have on the vote. Second, you ask what is the outcome of a vote by the three-member City Commission when one member votes in favor, one votes in opposition and one member abstains from voting.

Kansas follows the common law rules regarding abstentions from voting, as was set forth in Attorney General Opinion No. 77-391:

"Under the common law, a majority of a body, such as a municipal council . . . constitute a quorum, and the vote of a majority of those present, providing they comprise a quorum, is legally sufficient to constitute valid action of the body."

The opinion further states that because in some instances a member would attempt to block passage of a particular matter by abstaining, "the rule evolved that abstention from voting by a member of the body would generally be regarded as acquiescence in action which is favored by a majority of those who do vote with respect to the matter." Id. at p.2. See, also, Equity Investors, Inc. v. Ammest Group, Inc., 1 Kan. App. 2d 276 (1977), 63 A.L.R. 3d, 1072.

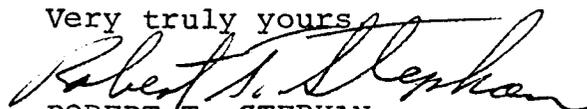
We note that the Kansas legislature has changed the latter rule with regard to school boards in K.S.A. 1981 Supp. 72-8205, by specifically providing that an abstention from voting in most instances shall be counted as having voted against the motion or resolution. However, it will be necessary for the legislature to statutorily change the common law rule as it pertains to other bodies should it intend that abstentions be counted as voting against a matter.

Applying these rules to the circumstances you present, we find that, in the first instance, a quorum was present and a majority of those voting voted in favor of the resolution. The abstentions would be considered as acquiescing with those in favor of the resolution. Therefore, the resolution passed and the commission is bound by the vote.

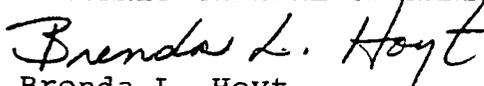
In the second instance, the vote was equally split, with no majority resulting. Therefore, the abstention may not be counted with the vote in favor and the resolution will not pass.

In conclusion, if a quorum of a municipal council is present and a majority of the members voting vote in favor of a particular matter, abstentions from voting are to be counted as acquiescence with the votes of the majority, and the action will bind the body. Abstentions from voting may not be counted as acquiescence where there is a tie vote and the proposition fails for lack of a majority voting in favor thereof.

Very truly yours,


ROBERT T. STEPHAN

ATTORNEY GENERAL OF KANSAS



Brenda L. Hoyt
Assistant Attorney General