



STATE OF KANSAS

OFFICE OF THE ATTORNEY GENERAL

2ND FLOOR, KANSAS JUDICIAL CENTER, TOPEKA 66612

ROBERT T. STEPHAN
ATTORNEY GENERAL

MAIN PHONE: (913) 296-2215
CONSUMER PROTECTION: 296-3751

September 18, 1985

ATTORNEY GENERAL OPINION NO. 85-126

Mr. David H. Heilman
City Attorney
200 West Main
Council Grove, Kansas 66846

Re: Cities and Municipalities--Ordinances of Cities--
Vote by Yeas and Nays; Majority of Members-
Elect Required

Synopsis: Under the provisions of K.S.A. 12-3002, an abstention should not be recorded and counted as acquiescence in the will of the majority voting on an ordinance. Thus, where the vote on a proposed ordinance by a 6 member council is 3 members in favor and two members against, with one member abstaining, and the mayor does not exercise the power to cast a deciding vote in favor of the ordinance, the ordinance fails. Cited herein: K.S.A. 12-3002, 14-111

* * *

Dear Mr. Heilman:

You request our opinion as to the validity of an ordinance vacating a portion of a street in the City of Council Grove. Specifically, you advise that the city council is comprised of 6 members, and that the vote on the ordinance was 3 members in favor and 2 members against, with one member abstaining. Additionally, you indicate that the mayor did not cast a vote on the ordinance.

Under the common law, a majority of a body, such as a municipal council, constitutes a quorum, and the vote of a majority of those present, providing they comprise a quorum, is legally sufficient to constitute valid action by the body. See Kansas Attorney General Opinion Nos. 77-391 and 82-43. Additionally, in cases where the common law requirement of a majority of a quorum was in effect, 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.

While the common law rule has been followed as to the transaction of city "business" [see K.S.A. 14-111], it has been displaced by K.S.A. 12-3002 in regard to the adoption of ordinances. That statute provides as follows:

"The vote on any ordinance, except as otherwise provided herein, shall be by yeas and nays, which shall be entered on the journal by the clerk. No ordinance shall be valid unless a majority of all the members-elect of the council of council cities or mayor and other commissioners of commission cities vote in favor thereof: Provided, That in council cities where the number of favorable votes is one less than required, the mayor shall have power to cast the deciding vote in favor of the ordinance." (Emphasis added.)

Under the above-quoted statute, an ordinance is not valid unless it receives the affirmative vote of a majority of the full membership of a city council, or the affirmative vote of one less than a majority and the affirmative vote of the mayor. In such circumstances, the weight of authority holds that an abstention will not be regarded as an affirmative vote aligned with the majority. See Kansas Attorney General Opinion No. 77-391.

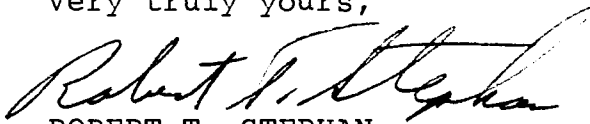
Accordingly, in our opinion under the provisions of K.S.A. 12-3002, an abstention should not be recorded and counted as acquiescence in the will of the majority voting on an ordinance. Thus, where the vote on a proposed ordinance by a 6 member council is 3 members in favor and two members against, with one

Mr. David H. Heilman

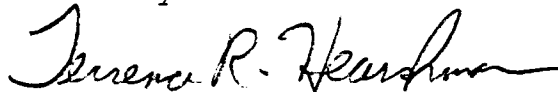
Page 3

member abstaining, and the mayor does not exercise the power to cast a deciding vote in favor of the ordinance, the ordinance fails.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:JSS:TRH:jm