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OPINION LETTER NO. 102
(Answer by ~~Letter-Klaffenbach~~)

FILED
102

The Honorable Steve Vossmeier
Representative, District 86
393 North Euclid Avenue
St. Louis, Missouri 63108

Dear Mr. Vossmeier:

This letter is in response to your questions asking:

Whether a member of the Board of Aldermen in a fourth-class city violates Article VII, Section 6 (nepotism) of the Missouri Constitution by casting a vote on the nomination of a third person for the position of City Clerk when the Alderman's spouse is the acting City Clerk?

If the Alderman can vote and tie results, can the Mayor cast a tie breaking vote on the position of City Clerk?

If the Alderman cannot vote, can a simple majority of two of the remaining three Aldermen appoint a City Clerk or must all three remaining Aldermen vote in favor of the appointment?

You also state:

Mrs. A. has been the appointed City Clerk of a fourth-class city since 1975. In 1977, her husband, Mr. A. was elected to the Board of Aldermen. Thereafter, Mrs. A. continued to be unanimously reappointed each year as the City Clerk by the remaining three members of the Board of Aldermen with Mr. A. abstaining from the nomination, motions, discussion and vote.

The Honorable Steve Vossmeier

Then in 1980, Alderman B moved to nominate Mrs. A for another term as City Clerk and Mr. A, as in the past, withdrew immediately from any participation. However, this time, neither Alderman C nor D seconded the motion and it died.

Presently, Mrs. A continues as acting City Clerk pending the appointment of her successor or her own reappointment. Alderman C and D intend to move and second the nomination of E as the new City Clerk and the successor to Mrs. A. Alderman A then announced that he intended to exercise his vote on the appointment of E, since E was no relation to A. At this time, the City Attorney pointed out that if E was denied the appointment partially as the result of a negative vote by A, then A's negative vote will have the effect of continuing Mrs. A in her position as acting City Clerk by having prevented a successor from being appointed.

The Board of Aldermen then agreed to table the nomination of E until Alderman A's right to vote on the nomination was determined by a legal opinion.

Section 6 of Art. VII of the Mo. Constitution provides:

Any public officer or employee in this state who by virtue of his office or employment names or appoints to public office or employment any relative within the fourth degree, by consanguinity or affinity, shall thereby forfeit his office or employment.

It is our view that § 6 of Art. VII of the Mo. Constitution is not violated by the alderman voting on the question of the appointment of an unrelated person to fill the position of city clerk even though the failure to make such an appointment may mean that the acting city clerk will continue in that position.

The Honorable Steve Vossmeier

Your second question asks whether the mayor can cast a tie-breaking vote on the position of city clerk if the alderman in question can vote and a tie results.

Section 79.320, RSMo, provides that the board of aldermen shall elect a clerk for such board, to be known as "the city clerk" whose duties and term of office shall be fixed by ordinance.

Under § 79.120, RSMo, the mayor has a seat in and presides over the board of aldermen but does not have a vote on any question except in case of a tie and is disqualified from voting in cases where he is an interested party. It is our view that this section authorizes the mayor to vote in case of a tie on the vote concerning the question of the election of a city clerk.

In view of our answer to your first question, an answer to your third question is not required.

Very truly yours,

A handwritten signature in black ink, appearing to read "John Ashcroft", written in a cursive style.

JOHN ASHCROFT
Attorney General