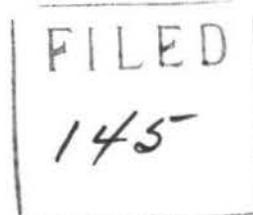


June 1, 1973

OPINION LETTER NO. 145
Answer by letter-Klaffenbach



Honorable Walter H. Mueller, Jr.
Representative, District 93
Room 101D, Capitol Building
Jefferson City, Missouri 65101

Dear Representative Mueller:

This letter is in response to your opinion request in which you ask:

"A question has arisen in a city of the 4th class as to whether or not the Mayor, the aldermanic representative and the City Engineer, or some similar City official have a right to vote on matters coming before the Planning and Zoning Commission.

"In the event they do have a right to vote, a further question arises as to whether or not the right to vote enjoyed by 'the City Engineer or some similar City official' is destroyed by reason of the fact that he is not a resident of the city of the 4th class in which he holds office."

We also understand from the city attorney of the city involved that the person holding the city office of "director of public works" is sitting as a member of the commission although he is not voting because he is a nonresident of the city and that the person employed as "city engineer" who is also a nonresident is not considered a member of the commission although he is attending meetings in an advisory capacity.

Section 89.320, RSMo, provides:

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"The planning commission of any municipality shall consist of not more than fifteen nor less than seven members, including the mayor, a member of the council selected by the council, the city engineer or similar city official and not more than twelve nor less than four citizens appointed by the mayor and approved by the council. All citizen members of the commission shall serve without compensation. The term of each of the citizen members shall be for four years, except that the terms of the citizen members first appointed shall be for varying periods so that succeeding terms will be staggered. Any vacancy in a membership shall be filled for the unexpired term by appointment as aforesaid. The council may remove any citizen member for cause stated in writing and after public hearing."

Our analysis of the sections in question lead us to the conclusion that all members of the commission have a right to vote on matters coming before the commission. Thus, it is our view that the mayor, the member of the city council selected by the council, and the city engineer ("or similar city official") have the right to vote on all such issues. We assume in reaching this conclusion that the planning commission is formed under the provisions of Section 89.320, quoted above, and is not a commission within the exception of subsection 2 of Section 89.330, RSMo, respecting zoning or planning commissions existing on October 13, 1963.

It is further our view that under Section 89.320 the city engineer and not the "director of public works" is the officer who is properly the ex-officio member of the commission. We reach this conclusion because the section refers to "the city engineer or similar city official." We take this language to mean that if there is a "city engineer" the legislature intended that such officer be a member of the commission and that the language "or similar city official" is applicable to designate the officer who acts as or performs the duties of a city engineer when there is no office of "city engineer" as such. Notably, in this respect Section 89.320 authorizes the council to select a member of the council to serve on the commission but does not speak in terms of selection with respect to the membership of "the city engineer or similar city official."

The next question is whether the city engineer as a member of the commission is unable to vote if he is not a resident of the city.

Section 79.250, RSMo, provides:

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"All officers elected or appointed to offices under the city government shall be qualified voters under the laws and constitution of this state and the ordinances of the city except that appointed police officers, the city attorney, and other employees having only ministerial duties need not be registered voters of the city. No person shall be elected or appointed to any office who shall at the time be in arrears for any unpaid city taxes, or forfeiture or defalcation in office. All officers, except appointed police officers, the city attorney, and other employees having only ministerial duties, shall be residents of the city."

While it is questionable that the duties of city engineer as such are other than ministerial (and we do not have a precise description of the city engineer's duties), it is clear that a voting member of the commission is exercising a part of the sovereign function and such a member is not an employee "having only ministerial duties." Therefore, it is our view that since the city engineer is a member of the commission under the provisions of Section 89.320 he must be a resident of the city.

Yours very truly,

JOHN C. DANFORTH
Attorney General