

Alderman—Vote Required to Declare Vacancy in Office.

Where a City Council consists of six Aldermen, four of whom are present at a legal meeting, a motion or resolution declaring the office of Councilman vacant by reason of the removal of the Councilman from the city is legally carried by a vote of three to one of the members present.

J. E. Kelly, Esq.,
County Attorney,
Boulder, Montana.

My dear Mr. Kelly:

You have submitted the following inquiry : What vote is required in order to declare the office of Councilman vacant where the Councilman has removed from the city?

In your inquiry you state that the Board of Aldermen of Whitehall consists of six members and that when the question of declaring the office of Councilman vacant arose, four members were present and that the vote stood three to one in favor of declaring the office vacant, the Alderman whose office was being voted upon not being present. The question of the validity of the action of the Council arises by virtue of the provisions of Section 3263 of the Revised Codes of 1907, which re-

quires that "a majority of the whole number of the members elected is requisite to appoint or elect an officer," it being doubted that the office could be declared vacant by any less number of the Councilmen than the number required to elect.

Section 3261 of the Revised Codes reads as follows:

"3261. A majority of the members of the council constitute a quorum for the transaction of business, but a less number may meet and adjourn to any time stated, and may compel the attendance of absent members under such rules and penalties as the council may prescribe."

In 2 Dillon on Municipal Corporations, Section 521, page 845, appears the following:

"The quorum of a body has been defined to be that number of the body which, when assembled in their proper place, will enable them to transact their proper business, or in other words that number that makes the lawful body, and gives them the power to pass a law or ordinance. If there be no statutory restriction, a majority of a municipal council or board is a quorum, and a majority of a quorum may act. Thus, to use Mr. Dane's illustration, if the body consists of twelve common councilmen, seven is the least number that can constitute a valid meeting, though four of the seven (the seven being duly assembled and present) may act."

It is well settled that when a quorum is present the majority of the quorum is sufficient for the carrying of any motion or resolution unless restrictions are placed upon the action of the body by statute. Section 3261, supra, constitutes four of your Council a quorum for the transaction of business. The only restriction relating to the transaction of business placed by statute upon the Council and relating to the subject in question is that in electing or appointing an officer a majority of the members elected is requisite. The declaring of the office to be vacant is not "electing or appointing" an officer, and this action may be taken by the same vote as would be required for the transaction of any other business not under special restriction.

It is, therefore, my opinion that where a City Council consists of six Aldermen, four of whom are present at a legal meeting, a motion or resolution declaring the office of Councilman vacant by reason of the removal of such Councilman from the city is legally carried or passed by a vote of three to one of the members present.

As to the facts involved concerning the removal of such Councilman, and whether he in fact had removed from the city so as to warrant the Council in taking this action, I pass no opinion, that being one of fact and not of law and not properly for the consideration of this office.

Very truly yours,

WELLINGTON D. RANKIN,
Attorney General.