

Penitentiary, Columbus, Ohio, in accordance with the Form of Proposal dated March 4, 1932. Said contract calls for an expenditure of twenty-nine thousand and twenty-seven dollars (\$29,027.00).

You have submitted the certificate of the Director of Finance to the effect that there are unencumbered balances legally appropriated in a sum sufficient to cover the obligations of the contract. You have also furnished evidence to the effect that the consent and approval of the Controlling Board to the expenditure have been obtained as required by section 8 of House Bill No. 624 of the 89th General Assembly. In addition, you have submitted a contract bond, upon which the New York Casualty Company of New York, N. Y., appears as surety, sufficient to cover the amount of the contract.

You have further submitted evidence indicating that plans were properly prepared and approved, notice to bidders was properly given, bids tabulated as required by law and the contract duly awarded. Also, it appears that the laws relating to the status of surety companies and the workmen's compensation have been complied with.

Finding said contract and bond in proper legal form I have this day noted my approval thereon and return the same herewith to you, together with all other data submitted in this connection.

Respectfully,
GILBERT BETTMAN,
Attorney General.

4221.

APPROVAL, NOTES OF CUYAHOGA FALLS CITY SCHOOL DISTRICT,
SUMMIT COUNTY, OHIO—\$50,000.00.

COLUMBUS, OHIO, April 1, 1932.

Retirement Board, State Teachers Retirement System, Columbus, Ohio.

4222.

VILLAGE MĀYOR—MAY VOTE ON CONFIRMATION OF HIS OWN
APPOINTMENT AS STREET COMMISSIONER.

SYLLABUS:

A mayor of a village may cast the deciding vote, in case of a tie, on the question of confirming his appointment of a street commissioner.

COLUMBUS, OHIO, April 1, 1932.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN:—I am in receipt of your recent communication which reads in part as follows:

"The question of whether a mayor of a village may cast the deciding vote in the matter of confirming his own appointment of a street commissioner, has been submitted to this Department by various villages.

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Question: When the vote of a village council stands three to three on a resolution to confirm the mayor's appointment of a street commissioner, may the mayor legally cast the deciding vote?"

Section 4363, General Code, provides as follows:

"The street commissioner shall be appointed by the mayor and confirmed by council for a term of one year, and shall serve until his successor is appointed and qualified. He shall be an elector of the corporation. Vacancies in the office of street commissioner shall be filled by the mayor for the unexpired term. In any village the marshal shall be eligible to appointment as street commissioner."

Section 4255, General Code, with reference to a village mayor, reads in part as follows:

"He shall be the president of the council, and shall preside at all regular and special meetings thereof, but shall have no vote except in case of a tie."

There is no limitation expressed in the statutes on the right of a mayor of a village to vote on any measure in case of a tie, except where a majority of all the members elected to council is necessary as in section 4224, General Code, which provides that "no ordinance shall be passed by council without the concurrence of a majority of all members elected thereto." As the passage of an ordinance requires the vote of a majority of all the members elected to council, the mayor of a village cannot cast the deciding vote in case of a tie. *Wuebker vs. Hopkins, et al.*, 29 O. A. 386.

The confirmation of the appointment of a street commissioner does not require an ordinance. An ordinance is a measure of a permanent character prescribing a permanent rule of government. *Blanchard vs. Bissell*, 11 O. S. 96. *Wuebker vs. Hopkins, et al., supra*. A motion to confirm is all that is required as such action is not of the character of legislation.

In the case of *State, ex rel., vs. Pinkerman*, 63 Conn. 176, the statutes provided that the mayor shall preside at meetings of the board of aldermen and shall, by and with the advice and consent of the board of aldermen of said city, appoint the police commissioners. It was also provided that the mayor shall have no vote except in the case of a tie. The court said:

"Section 7, as previously quoted, provides that the mayor shall preside at the meetings of the board of aldermen, 'and shall have a casting vote only in case of a tie.' There is no limitation of this casting vote to any particular kind or class of business. A tie is more likely to occur upon questions involving political considerations, and arises most often as to the creation of offices or appointments to office. This the legislature may be presumed to have had in mind when this section was adopted, and we see no reason for adopting a narrow construction of a provision

plainly adapted to the prevention of 'dead locks,' which are never more injurious to good government than when the result of a contest which keeps an office vacant that the public interests require to be filled, or prolongs an official term beyond the period contemplated by law."

In the case of *State, ex rel., vs. Yates*, 19 Mont. 239, which holds to the same effect, the court says:

"Upon some matters—notably passing an ordinance over the mayor's veto—the law has required a vote of two-thirds of the whole number of councilmen elected. In such a contingency the statutes have intentionally excluded the mayor from voting; and if the legislature had intended to deny him the right to vote where a tie arises upon a confirmation, the purpose of the legislature would have been easily expressed by similar language requiring for confirmation of a vote of a majority of the whole number of councilmen elected."

In the case of *Carroll vs. Wall*, 35 Kans. 36, it is held:

"The mayor of a city of the second class is authorized to give a casting vote upon the confirmation of an officer appointed by him, where the council is equally divided on the question."

To the same effect are the cases of *Hecht vs. Coale*, 93 Md. 692, and *McCourt vs. Beam*, 42 Ore. 41. In the latter case the court said:

"Under city charters giving the mayor a right to vote in case of a tie, and providing that he shall appoint to office by and with the consent of the council, it is uniformly held, as far as we are advised, that he is authorized to give the casting vote upon the confirmation of his nominee when the council is equally divided: * * *."

If the Legislature had intended that the mayor of a village should not have the right to vote in case of a tie on questions of confirmations of appointments made by him, it could have easily required a majority of all the members elected to council. As there is no indication from a reading of the statutes that it was the intention of the Legislature to deprive the mayor of a village of his right to vote in case of a tie in cases of this kind, I am of the opinion that a mayor of a village may cast the deciding vote, in case of a tie, on the question of confirming his appointment of a street commissioner.

Respectfully,
GILBERT BETTMAN,
Attorney General.