

1911.

COUNCIL OF VILLAGE—TIE VOTE ON ORDINANCE TO EMPLOY ATTORNEY—MAYOR MAY CAST DECIDING VOTE.

SYLLABUS:

When the council of a village casts a tie vote for and against the passage of an ordinance employing an attorney and fixing his compensation, as provided in Section 4220, General Code, the mayor of such village may cast the deciding vote.

COLUMBUS, OHIO, March 29, 1928.

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

GENTLEMEN:—Acknowledgment is made of the receipt of your recent communication, which reads as follows:

“The syllabus of Opinion No. 800, page 307, Opinions of the Attorney General for 1914, reads:

‘Section 4255, General Code, makes the mayor of a village a member of council to the extent that he has the right to vote in case of a tie, consequently, when the council consists of an even number of members, and these are evenly divided, the mayor may cast a deciding vote; an ordinance so voted on is legally passed.’

The first branch of the syllabus of Opinion No. 2756, page 563, Opinions of 1925, reads:

‘1. A mayor of a village cannot cast the deciding vote when the vote of the members of council is a tie upon the resolution or ordinance of the village when such resolution or ordinance involves the expenditure of money as contemplated by Section 4224, G. C., but in cases where, by resolution or ordinance the council has previously provided for the authorization of a contract and has provided for and appropriated the money involved in the contract price of the improvement, the mayor may cast the deciding vote in the formal letting of the contract to the successful bidder.’

QUESTION: When the council of a village casts a tie vote for and against the passage of an ordinance employing an attorney and fixing his compensation, as provided in Section 4220, G. C., may the mayor of such village cast the deciding vote?”

The authority for the employment of legal council by a village is found in Section 4220, General Code, which provides:

“When it deems it necessary, the village council may provide legal counsel for the village, or any department or official thereof, for a period not to exceed two years, and provide compensation therefor.”

The answer to your question is not without difficulty, due to the language used in the various sections of the General Code hereinafter referred to. The opinions of my predecessors have not been uniform on your question.

It is the universal parliamentary practice throughout the United States that in case of a tie vote of a deliberative body, the presiding officer casts the deciding vote.

While Section 4224, General Code, provides in part :

“No ordinance shall be passed by council without the concurrence of a majority of all members elected thereto.”

this language is not substantially different from that of Section 9 of Article II of the Constitution of Ohio, which provides that :

“No law shall be passed in either house without the concurrence of a majority of all the members elected thereto.”

Section 4255, General Code, provides as follows :

“The mayor shall be elected for a term of two years, commencing on the first day of January, next after his election and shall serve until his successor is elected and qualified. He shall be an elector of the corporation. He shall be the chief conservator of the peace within the corporation, and shall have the powers hereinafter conferred, perform the duties hereinafter imposed, and such other powers and duties as are provided by law. 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.”

Section 16 of Article III of the Constitution of Ohio provides in part as follows :

“The lieutenant governor shall be president of the senate, but shall vote only when the senate is equally divided; * * * ”

I think that there is a complete analogy between the constitutional provisions in respect of the adoption of laws by the concurrence of a majority of all the members elected to each house and the voting of the lieutenant governor when the senate is equally divided and the requirements of Section 4224 that no ordinance shall be passed without the concurrence of a majority of all the members elected thereto and Section 4255 which provides that the mayor shall have no vote except in case of a tie.

Under Article XVIII of the Constitution of Ohio, municipalities have the right of local self-government.

Therefore, unless there be some provision in the particular municipality upon the subject, I am of the opinion that by virtue of Section 4255, General Code, whenever the members of a village council are equally divided in their votes upon any measure, including action under Section 4220, General Code, the mayor of the village may cast the deciding vote.

Respectfully,
EDWARD C. TURNER,
Attorney General.