

authorized to provide for compensating justices of the peace by salary in lieu of fees. Accordingly, legislation would be required in order to authorize or require the payment of a salary.

However, the Revised Judicature Act¹⁸ presently authorizes the board of supervisors of any county to fix the amount and manner of payment of a salary to circuit court commissioners. Another statute¹⁹ requires the fixing of the amount of such salary prior to election and prohibits the increasing or decreasing thereof following election or appointment. Subject to such limitations, the board of supervisors of any county would, in the absence of amendment to or repeal of such statutes, be authorized to provide for the payment of a salary in lieu of fees to circuit court commissioners during this five-year period commencing on January 1, 1964. However, the legislature is vested with the same authority above set forth with respect to the office of justice of the peace, not only to abolish the office of circuit court commissioner, but also to fix the compensation of the commissioners during this period.

FRANK K. KELLEY,
Attorney General.

630709.1

CITIES: — Fourth Class — city council, quorum — authority of a lesser number.

A majority of the aldermen constitutes a quorum. A lesser number may adjourn from time to time or take action to compel the attendance of absent members, but may not fill vacancies or transact other business.

No. 4172

July 9, 1963.

Honorable Walter G. Nakkula
State Representative
5870 Cedar Lake Road, R.F.D. No. 1
Gladwin, Michigan

Your letter under date of June 18, 1963, refers to a fourth class city and requests with respect thereto an opinion upon certain questions which will be answered seriatim.

"1. How many city council members have to be present to constitute a quorum?"

The city council consists of two aldermen from each ward, the mayor and city clerk.¹ The latter two are ex-officio, nonvoting members, except in case of a tie, in which case the mayor is authorized to cast the deciding vote.² The number of aldermen on the council varies, of course, from city to city in accordance with the number of wards therein. You do not state

¹⁸ P.A. 1961 No. 236 § 1067, being M.S.A. 1962 Rev. Vol. § 27A.1067.

¹⁹ C.L. 1948 § 45.421, M.S.A. 1961 Rev. Vol. § 5.1101.

¹ C.L. 1948 § 88.1, M.S.A. 1949 Rev. Vol. § 5.1697.

² C.L. 1948 § 88.4, M.S.A. 1949 Rev. Vol. § 5.1700; C.L. 1948 § 88.2, M.S.A. 1949 Rev. Vol. § 5.1698.

the number of wards or aldermen in the city to which you refer. However, the statute³ specifies that a majority of the aldermen shall constitute a quorum.

“2. Can action be taken on any issue voted by the city council members when a quorum is not present?”

The last cited section of the statute provides with respect thereto:

“All meetings and sessions of the council shall be public. A majority of the aldermen shall make a quorum for the transaction of business; a less number may adjourn from time to time and all pending business and business noticed or set down for hearing at such meeting shall be taken up and heard at such adjourned meeting without further notice, and the members present may compel the attendance of absent members in such manner as shall be prescribed by rules or ordinance. But no office shall be created or abolished, nor any tax or assessment be imposed, street, alley or public ground be vacated, real estate or any interest therein purchased, leased, sold or disposed of, or private property be taken for public use, unless by a concurring yea and nay vote of $\frac{2}{3}$ of all the aldermen elect; nor shall any vote of the council be reconsidered or rescinded at a special meeting, unless there be present as many aldermen as were present when such vote was taken. No money shall be appropriated except by ordinance or resolution of the council; nor shall any resolution be passed or adopted except by the vote of a majority of all the aldermen elected to office, except as herein otherwise provided.”

As stated therein, those members present, in the absence of a quorum, may take either or both of the following actions:

1. Adjourn from time to time.
2. Compel the attendance of absent members in such manner as shall be prescribed by rules of the council or ordinance.

Express enumeration of those two powers excludes authority to exercise any other power of the council.⁴ In the absence of a quorum those aldermen present may either adjourn or compel the attendance of absent members, but may not transact other business.⁵

“3. Does it require a quorum present to appoint city council members to fill any vacancies?”

This question was presented to the Michigan Supreme Court and answered in the affirmative in *Burns vs. Stenholm*, supra. While Ironwood, the city there involved, has a home rule charter, the pertinent provisions thereof are comparable to those of the fourth class cities act, which authorizes the council to fill, subject to certain exceptions, vacancies in elective offices.⁶ I quote from the court's opinion at pages 644-645:

³ C.L. 1948 § 88.7, M.S.A. 1949 Rev. Vol. § 5.1703.

⁴ *Sebewaing Industries, Inc. vs. Village of Sebewaing*, 337 Mich. 530, 545; *Perry vs. Village of Cheboygan*, 55 Mich. 250, 253-254.

⁵ *Burns vs. Stenholm*, 310 Mich. 639, 644-645.

⁶ C.L. 1948 § 85.17, M.S.A. 1949 Rev. Vol. § 5.1639.

"It is urged by plaintiffs that two commissioners cannot fill vacancies unless a quorum of the elected commissioners are present at the meeting; and that a quorum consists of a majority of all the members elected to the commission. Defendants, except commissioner Lawyer, urge that by virtue of section 9 of chapter 4 of the city charter such appointments were legal.

"Chapter 4, § 9, of the city charter reads as follows: 'A vacancy in any elective office shall be filled by appointment by a majority of the remaining members of the commission.' This section relating to appointments must be read and construed in connection with section 6 of chapter 4 relating to the number of commissioners necessary to constitute a quorum. Under section 6 it is provided that a less number than a quorum 'may adjourn from day to day and compel the attendance of absent members.' It is our opinion that when only two members of the commission are in attendance at any regular or special meeting, they are limited in power and may only adjourn or compel attendance of absent members. They may not transact any business such as making an appointment to fill a vacancy in the city commission."

That decision, which is directly in point, requires the answering of your question in the affirmative.

FRANK J. KELLEY,
Attorney General.