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Opinion No. 02-066

Overcoming Mayoral Veto under Portland City Charter

QUESTION

Under the Portland City Charter, the mayor may veto a city ordinance or resolution. The ordinance is null and void unless the city council reenacts or repasses the ordinance or resolution "by a two-thirds majority vote." Does this provision require a vote of two-thirds of the members present at the council meeting, or two-thirds of the entire membership of the council?

OPINION

Because the Portland City Charter only requires a majority of members *present* to enact an ordinance, it is our opinion that only a two-thirds vote of the members present is necessary to reenact the ordinance over the mayor's veto.

ANALYSIS

This opinion concerns the Portland City Charter, 1939 Tenn.Priv.Acts ch. 568, as amended. The city is governed by a city council composed of a mayor and seven aldermen. Portland City Charter, art. III, § 1. Article V, Section 4 of the Charter provides:

> That the Mayor shall have the right to veto, within two whole days, Sundays excluded, any ordinance or resolution passed by the City Council. He shall enter his reasons for such veto on the minutes of the proceedings. The veto of the Mayor shall render null and void any ordinance or resolution, *unless the City Council shall, by a two-thirds majority vote, reenact or repass such ordinance or resolution*, which has been vetoed at the next regular meeting of the City Council, except that when a new City Council may be inaugurated in the meantime, and in that event the ordinance or resolution shall be void and of no effect.

(Emphasis added). Article III, Section 11 of the Charter provides:

> That a majority of all the members of the City Council shall constitute a quorum, but a smaller number may adjourn from day to day and may compel the attendance of absentees in such manner and under such penalty as the City Council may provide.

The question is whether the requirement of a two-thirds vote to reenact an ordinance over the mayor's veto is satisfied if two-thirds of the members present reenact the ordinance. In that case, as few as three votes out of a quorum of four present could satisfy the requirement. If, on the other hand, the charter requires a two-thirds vote of the entire council membership, then five council members would have to vote to reenact the ordinance. The answer to this question is not clear. We think, however, that a court would refer to other sections of the Charter for guidance. Article III, Section 15 of the Charter provides:

> *That the affirmative vote of a majority of all the members of the city council* ***present*** *shall be necessary to adopt any ordinance or resolution of the city.* Each and every ordinance or resolution passed by the city council shall be signed by the presiding officer and the recorder, and shall be filed with the recorder. *All elections by the city council shall be by an affirmative vote of a majority of all the members of the city council.*

(Emphasis added). Thus, an ordinance must be adopted by a vote of a majority of the members of the city council actually present at the meeting. Article V, Section 4 provides that an ordinance, enacted by such a vote and vetoed by the mayor, will be null and void "unless the City Council shall, by a two-thirds majority vote, *reenact or repass* such ordinance or resolution . . .." (Emphasis added). We think a court would conclude that, because the Charter only requires a majority of members *present* to enact an ordinance, only a two-thirds vote of the members present is necessary to reenact the ordinance over the mayor's veto.

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