

N.D.A.G. Letter to Johnson (July 22, 1985)

July 22, 1985

Honorable Harvey Johnson
City Mayor
Maddock, North Dakota 58348

Dear Mayor Johnson:

Thank you for your letter of July 9, 1985, requesting, on behalf of your city attorney, an opinion as to the determination of a quorum for purposes of conducting business of the Maddock City Council. I have read the letter sent to Mayville City Attorney Gerald Engelman of June 19, 1984. I have also read an earlier letter to Mr. Engelman dated April 25, 1984. I have enclosed a copy of the latter letter for your review.

Based upon the current statutes of this state, it is difficult to reach any other conclusion other than that reached in the two letters to Mr. Engelman. As the mayor is a member of the city council, he must be counted in arriving at the total number of members of the governing body of that city. In the case of the City of Maddock, it would appear that the total members of the governing body would be five (four aldermen and one mayor).

Furthermore, N.D.C.C. § 40-06-03 defines quorum as the majority of the members of the governing body. The ordinary sense definition of the term "majority" means a number more than one-half of the total number of a given group.

Thus, with respect to the Maddock City Council, a majority needed to conduct business would be three. In arriving at this number, the mayor may be counted regardless of whether he is able to vote or not. Remember, we are only discussing the quorum necessary to do business rather than the passage of ordinances.

With respect to the discussion in the June 19, 1984, letter, as to the number of members needed to concur in the passage of an ordinance, the creation of a liability, or appropriation of money pursuant to N.D.C.C. § 40-11-02, I agree with the conclusion that the mayor may be counted in determining the appropriate members who concur so long as the mayor has actually voted. Where the mayor does not vote, he may not be counted.

Thus, with respect to the Maddock City Council, three members of the governing body must concur on the passage of an ordinance in order for it to be effective. The mayor may be counted in determining whether three have so concurred only where the mayor has actually voted as a result of a tie vote.

Sincerely,

Nicholas J. Spaeth

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Enclosure