

**LETTER OPINION
2004-L-10**

January 30, 2004

Mr. William J. Brudvik
Mayville City Attorney
PO Box 547
Mayville, ND 58257-0547

Dear Mr. Brudvik:

Thank you for your January 8, 2004, letter asking whether it was appropriate for the mayor to cast the deciding vote on a matter in which he had an interest.

I understand Mayville is a home rule city. State laws continue to apply to home rule cities unless the home rule city passes an ordinance to the contrary. N.D.C.C. § 40-05.1-06. I understand the city does not have an ordinance indicating the manner of voting in case of a conflict. Thus, the council should have complied with N.D.C.C. § 44-04-22. This North Dakota law states:

A person acting in a legislative or quasi-legislative or judicial or quasi-judicial capacity for a political subdivision of the state who has a direct and substantial personal or pecuniary interest in a matter before that board, council, commission, or other body, must disclose the fact to the body of which that person is a member, and may not participate in or vote on that particular matter without the consent of a majority of the rest of the body.

This statute indicates the mayor may not participate in or vote on a matter in which he has an interest as defined in the statute, without the consent of a majority of the rest of the body.

The public is entitled to have its representatives perform their duties free from any personal or pecuniary interest that might affect their judgment. Public policy forbids the sustaining of municipal action founded upon a vote of a council member or a member of a municipal governing body in any matter before it which directly or immediately affects him or her individually. . . . In addition, an individual member ordinarily cannot vote on

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a matter in which that member or his or her employer is interested. If the member does, the action taken by the body of which he or she is a member is invalidated. . . .

4 Eugene McQuillin, The Law of Municipal Corporations § 13.35 (3d ed. 2002) (footnotes omitted).

Because state law was not complied with, in my opinion the city council should take up the matter again and proceed in accordance with N.D.C.C. § 44-04-22.

I hope this information is helpful.

Sincerely,

Wayne Stenehjem
Attorney General

las/pg