OPINION
42-50

December 10, 1942   (OPINION)

ELECTIONS

RE: Cities Tie Vote

I have your letter of December ninth advising that in a special city election, the vote for mayor was a tie vote. You inquire as to how the election should be determined and who should be declared elected in case of a tie vote.

Under the provisions of Section 3671, Compiled Laws of 1913, provision is made for a tie vote in the election of any city officer. That section reads in part as follows:

> In case of a tie in the election of any city officer, it shall be determined by lot, in the presence of the city council, in such manner as it shall direct, which candidate or candidates shall hold office."

The city council should, therefore, notify both candidates who tied for the highest vote for office of mayor, that such tie vote will be determined by lot at some time and place, and at such time and place they should proceed to determine the winner. If one party refuses to be present, they should follow the statute and proceed anyway.

You advise that one of those who ran for mayor is not a councilman. If the lot determines that he loses for mayor, he can still hold his office as a member of the city council. There is nothing in the law which requires a councilman to resign his office, as councilman, before he shall be eligible as a candidate for mayor.

ALVIN C. STRUTZ
Attorney General