

MUNICIPALITIES - Powers of mayor of Louisiana, Missouri.  
Construction of city charter.

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May 24, 1934.

5-26



Honorable J. W. Crewsdon, Mayor  
Louisiana, Missouri

Dear Sir:

Your request for an opinion, in substance, is  
as follows:

"Does the charter of the City confer  
upon the President pro tempore of the  
Council the nominating powers of the  
Mayor, merely because the Mayor is ab-  
sent from a council meeting?"

We call your attention to Article II, Section 4,  
of the charter of Louisiana, which provides that the presi-  
dent pro tem of the city council shall perform all the duties  
of the mayor under three circumstances, and no other. These  
circumstances are:

- (1) During the absence from the city  
of the mayor.
- (2) During the vacancy in the office of  
the mayor.
- (3) Inability of the mayor to serve.

The power to appoint all city officers shall, by  
Article IV, Section 6 of the charter, be vested in the mayor,  
and before the president pro tem of the council is authorized

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to make any appointments, he must have occupied the office of mayor under one of the three above circumstances set out in the charter, whereby he becomes acting mayor, because the president pro tem of the council as such has no appointing power.

That part of Article II, Section 4, of the charter relating to the mayor's absence from the city is fully interpreted in Chapter XX, Article I, Section 12 of the Ordinances, which provides that if the mayor intends to be absent from the city for more than twelve weeks he shall notify the city council thereof, and the president pro tem of the council shall perform the duties of the mayor during his absence. This section and charter, when construed together, mean that the mayor is not absent from the city within the meaning of the above charter provision unless he intends, at the time of leaving, to be gone for a period of twelve weeks.

There was no vacancy in the office of mayor in the circumstances outlined in your letter. The mere fact that the mayor went home after an all night marathon council meeting did not create a vacancy in the office of mayor within the meaning of the above charter.

The city council cannot resort to a marathon meeting for the purpose of wearing out and exhausting the mayor physically, and then when he is compelled to leave the meeting because of physical exhaustion declare that the mayor's inability to attend that meeting longer is an inability to fill the office of mayor generally. No city council can, by such methods, remain continuously in session and create a state of inability on the part of the mayor to attend such meetings so as to transfer the appointive powers of the mayor to the present president pro tem of the council, as was attempted to be done in this case. The appointive power of the mayor, under the charter of your city, has heretofore been upheld in State ex rel. Kuhlman v. Poucher, 98 Me. App. 109.

It is, therefore, the opinion of this office that the attempted appointment of a street commissioner by the president of the council, under the circumstances, was void.

Yours very truly,

APPROVED:

FRANKLIN E. REAGAN  
Assistant Attorney General

ROY McKITTRICK  
Attorney General

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