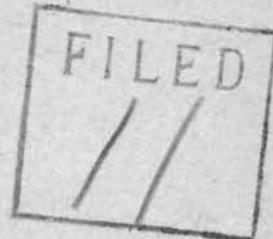


CITIES: Boards of Aldermen of cities of the 4th Class shall only select an Acting President of the Board in the absence of Mayor or vacancy in office of Mayor.

November 10, 1936.

Mr. C. D. Bray  
City Attorney  
City of Campbell  
Missouri

11-11



Dear Mr. Bray:

This will acknowledge receipt of your request for an opinion which reads as follows:

"Sec. 6961. BOARD TO SELECT AN ACTING PRESIDENT, WHEN. -- In the absence of the mayor, the board shall elect one of their own number to occupy the place temporarily, who shall be styled "acting president of the board of aldermen." (R. S. 1919)

"Sec. 6962. ACTING PRESIDENT TO PERFORM DUTIES OF MAYOR, WHEN.-- When any vacancy shall happen in the office of mayor by death, resignation, removal from the city, removal from office, refusal to qualify, or from any other cause whatever, the acting president of the board of aldermen shall, for the time being, perform the duties of mayor, with all the rights, privileges, powers and jurisdiction of the mayor, until such vacancy be filled or such disability be removed; or in case of temporary absence, until the mayor's return. (R. S. 1919)

"Sec. 24. OF THE PRESIDENT AND BOARD OF ALDERMEN.-- In the absence of the Mayor the Board of Aldermen shall elect one of their number to occupy the place temporarily, and who shall be styled "Acting President of the Board of Aldermen." He shall, for the time being, perform the duties of the Mayor, when any vacancy shall happen in the office of Mayor, from any cause whatever until such vacancy be filled or until the temporary disability shall have been removed or in

case of temporary absence, until the Mayor returns. (Ordinance of the City of Campbell)"

"The first two above paragraphs are sections of the Missouri statutes, and the third is a section of the ordinances of the City of Campbell.

"Immediately following each annual election, held on the first Tuesday in April, the Board of Aldermen convene with the holdover aldermen and the newly elected aldermen, if any, for the purpose of organizing for another year. At the meeting the Mayor submits his appointments for the appointive offices, subject to the approval of the Board, and the Board elects its clerk. The above quoted statutes and City ordinances also provide for the election of a president of the Board and prescribe his duties. It has been the practice of the successive boards of aldermen of the City of Campbell over a long period of years to elect the President of the Board at the same meeting in which the appointive officers are made, and the President so elected acts as mayor in the absence or disability of the mayor from time to time as such circumstances occur.

"Some of the present aldermen have challenged the validity and legality of the election of the President of the Board in this manner and contend that the Board has no authority to elect a President only in the absence or disability of the Mayor, as enumerated in the law, and they contend further that this election is required to be made on each and every occasion in the absence or disability of the Mayor, and as soon as the Mayor returns or the disability is removed, the then elected President of the Board terminates his office, and there would be no President of the Board until again when the Mayor absents himself or becomes disabled from any cause from performing his duties, at which time and on which occasion, the Board of Aldermen would reconvene and again elect a President to serve until the then absence or disability is removed and so on.

"In other words, each time the Mayor would leave the City or would be unable to perform his duties from any cause, the Board would have to be convened and elect a Presi-

dent who would act as Mayor. It is true the language of the law apparently provides for just exactly that kind of procedure. However, this procedure would be very impractical, very cumbersome, and inconvenient, and it could easily so happen that the majority of the Board of Aldermen would not be available in case of an emergency requiring some official act of the Mayor.

"If your time and facilities will permit, we would very much appreciate your opinion as to which of the procedures is correct. That is, can the Board of Aldermen at its organization meeting and when the Mayor is present and presiding elect a President of the Board who would serve throughout the year and perform the duties of Mayor on the stated occasions requiring him to do so, or should the Board convene and elect a President of the Board on each and every occasion in the absence or disability of the Mayor?"

It is to be noted from Sections 6961 and 6962, R. S. Mo. 1929, as hereinabove set forth in your request for an opinion that the Board of Aldermen, in the absence of the Mayor, shall select one of their own number to be "Acting President of the Board of Aldermen". You will also note from Section 6962, supra, in your request for an opinion that "when any vacancy \*\*\* or from any other cause whatever, the Acting President shall perform the duties of the Mayor, until such vacancy is filled or such disability removed, or, in case of temporary absence, until the Mayor's return.

In the case of Cummins v. Kansas City Public Service Company, 66 S. W. (2d), 1. c., 931, the Court, in speaking of the fundamental rule relating to construction of statutes, said:

\*\*\*\*\* It is, \*\*, fundamental that where the language of a statute is plain and admits of but one meaning there is no room for construction. \*\*\*\*\*

In the case of State vs. Thatcher, 92 S. W. (2d) 1. c. 643, the Court had before it for construction the statute relating to St. Louis County and said:

\*\*\*\*\* the language of the enactment is perfectly clear and unambiguous. In such case there is nothing to construe, and no intent contrary to the evident intent can rationally or permissibly be implied. \*\*\*\*\*

It is obvious that the statutes in question intend that only in the event of the absence of the Mayor or in the case of temporary absence or when any vacancy shall occur in the office of the Mayor, the Board of Aldermen shall select one of their number to occupy the place of the President of the Board of Aldermen.

CONCLUSION.

In light of the above, it is the opinion of this department that the Board of Aldermen of a city of the 4th class shall select an Acting President of the Board of Aldermen to perform the duties of Mayor only in the absence of such Mayor or when any vacancy shall occur in the office of the Mayor.

Yours very truly,

RUSSELL C. STONE  
Assistant Attorney-General.

APPROVED:

J. E. TAYLOR  
(Acting) Attorney-General)

RCS/afj