

September 9, 1963

Honorable Walter J. Meyer
Representative, Fourth District
St. Louis County
9495 Yorktown Drive
St. Louis 37, Missouri



Dear Mr. Meyer:

This is in response to your request for an opinion of this office concerning the rights and powers of the Mayor and Board of Aldermen of Bellefontaine Neighbors, a city of the fourth class.

You have inquired:

" * * * whether the appointment by the mayor of . . . officers, after their removal by the board of aldermen, is an effective appointment and if such officers are entitled to the compensation provided for such offices. * * *"

Section 79.230, RSMo 1959, provides, in part, as follows:

"The mayor, with the consent and approval of the majority of the members of the board of aldermen, shall have power to appoint a treasurer," etc.

Section 79.280, RSMo 1959, contains the following language:

"If a vacancy occur in any office not elective, the mayor shall appoint a suitable person to discharge the duties of such office until the first regular

meeting of the board of aldermen thereafter, at which time such vacancy shall be permanently filled."

We construe your inquiry to relate solely to appointive city officers, and not elective city officers.

Our analysis of these statutes leads us to the following conclusions:

1. Section 79.280 authorizes the mayor to appoint temporary officials when a vacancy occurs. This, of course, is necessary for the continued functioning of the city.
2. At the next regular meeting of the board of aldermen, the mayor must submit the name of a person to fill the vacancy as the permanent official. Section 79.280.
3. If such permanent appointee fails to get a majority vote of approval by the board of aldermen, such appointee is rejected.
4. The mayor then can appoint a temporary official to act until the next regular meeting.
5. At the next regular meeting, the mayor must submit for permanent appointment either the temporary appointee or someone else. Section 79.280.
6. While the mayor may appoint as a temporary official one who has been rejected, he may not resubmit any person as a permanent appointee who has been rejected. That is, the mayor must submit a new name and cannot continue to resubmit the old, rejected name.
7. Temporary appointees are entitled to the pay for the office during the period of their temporary appointment only.
8. Where an official has been removed under Section 79.240 by a two-third vote of the board of aldermen, it is not proper for the mayor to submit such person for a permanent appointment, but it does not prevent such person from being a temporary appointee of the mayor, assuming that appointee is otherwise suitable.

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While the statute does not clearly delineate the authority of the mayor and the board of aldermen when a so-called impasse is reached in the appointment of permanent officials of a fourth class city, it seems clear from the statute that the mayor is given plenary authority in the appointment of temporary officials. Yet, the board of aldermen has the absolute right to approve the appointment of permanent officials, and hence the mayor cannot frustrate the absolute power of the board of aldermen by resubmitting appointees for permanent appointment who have been rejected.

We hope the foregoing views of this office will aid you in the resolution of this problem.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

By

J. Gordon Siddens
Assistant Attorney General

JGS:ml