

CITIES OF THE FIRST CLASS--OFFICERS; Vacancy in City Council, how filled, and reorganization pursuant to vacancy.

April 23, 1937.

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Mr. Sam Alberts
City Councilman
City of St. Joseph
Ninth and Felix Street
St. Joseph, Missouri

Dear Sir:

We acknowledge your request for an opinion dated April 19, 1937, which reads as follows:

"I wish to ask your opinion with reference to a question that came up to-day at our Council Meeting.

"If the president of the Council tenders his resignation to the other members of the Council, what is the procedure in electing a new president? Does the present President Pro tem, succeed in that office, or is it necessary to hold another election?"

The Courts will take judicial knowledge that St. Joseph is a city of the first class.

Section 6114 R. S. Mo. 1929, provides in part:

"* * * * The members of the common council shall select one of their number as president, who shall serve as such president for a term of two years, and who shall preside over the meetings of the common council, and shall vote as other members. In case of the president's absence or inability to act, the common council shall select a president pro tem., who, during the continuance of the president's absence or inability to act, shall exercise all the rights and powers devolving upon the president. * * * *."

Section 6171, R. S. Mo. 1929, provides in part:

"The mayor and common council shall have power within the city, by ordinance, not inconsistent with the Constitution or any laws of this state or of this article: * * * *.

"XXXIX. To regulate the election of all elective officers and provide for removing from office all persons holding office under the provisions of this article, where such election and removal is not otherwise provided for by this article.

Article XIV, Section 5 of the Missouri Constitution provides:

"In the absence of any contrary provision, all officers now or hereafter elected or appointed, subject to the right of resignation, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified."

CONCLUSION.

This department is of the opinion that under the Missouri Constitution any person holding the office of city councilman, for the city of St. Joseph, holds the same subject to the right to resign. Where a resignation is tendered by a city councilman, it can be accepted only by a City Ordinance as provided in Section 6171, supra. Where resignation is thus accepted there is a vacancy in said office. Where the officer resigning be the president of the City Council, then the office of president of the City Council becomes vacant, by said resignation. While the Legislature intended the president pro tem to act in the president's absence, or inability, there was no intention for him to become president of the council pursuant to a vacancy in office, or the Legislature would have so stated.

Mr. Sam Alberts

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Under the Statutes the president is to be chosen at an election by the members of the council, and the office of president is not filled by operation of the law. Where there is a vacancy in said office, a majority vote of the members will elect the new president, and until the president be elected the president pro tem would continue as the presiding officer.

Respectfully submitted

WM. ORR SAWYERS
Assistant Attorney General.

APPROVED:

J. E. TAYLOR
(Acting) Attorney General.

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