

OPINION NO. 80-100

Syllabus:

The president pro tempore of a village legislative authority retains his right to vote on all matters as a member of the council while acting as the presiding officer of a council meeting when the mayor is absent from the meeting. (1962 Op. Att'y Gen. No. 3203, p. 643 approved.)

To: Anthony L. Gretlick, Williams County Pros. Atty., Bryan, Ohio

By: William J. Brown, Attorney General, December 31, 1980

I have before me your request for my opinion concerning village council meetings. Specifically you ask:

When the village mayor is absent from the village council meeting and the president pro tempore of the council becomes acting mayor pursuant to ORC 733.25, does the president pro tempore retain his right to vote on all matters brought before council?

Pursuant to R.C. 731.10 and R.C. 733.25, when the mayor is absent from the village, or unable, for any cause, to perform his duties, the president pro tempore becomes acting mayor, with the same duties and powers as the mayor.¹ Since one of the mayor's duties is to preside at the meetings of the village legislative authority, R.C. 733.24, it follows that, absent a charter provision to the contrary, the president pro tempore acts as the presiding officer when the mayor is absent from a meeting.

The mayor of a village is president of the legislative authority by virtue of his position as mayor, and has no vote except in the case of a tie. R.C. 733.24. The president pro tempore of a village council is elected to that position by the village council from its own number. R.C. 731.10. Your question raises the issue whether the president pro tempore, while presiding at a council meeting, retains his right, as a member of the council, to vote on all matters, or whether he has only a tie-breaking vote as the presiding officer.

It is my opinion that the president pro tempore of a village legislative authority does not lose his right, as a member of the council, to vote on all matters while presiding at a council meeting. A council member's rights are not forfeited because he assumes the additional presiding duty of the mayor. The mayor is elected president of the council by the entire village as part of the duties which devolve upon the office of the mayor. He is a part of the council, but with a restricted right to vote. See *Babjak v. Alten*, 106 Ohio App. 191, 154 N.E.2d 14 (Lorain County 1958). However, the president pro tempore is elected to the village council by the village citizens, just as every other council member is elected, and with the same rights and responsibilities as every other council member. He is then elected to the position of president pro tempore by the other members of the council. There is no Ohio authority to the effect that the president pro tempore loses his right to vote incident to his acting as presiding officer.

In your request, you call my attention to 1962 Op. Att'y Gen. No. 3203, p. 643, the syllabus of which reads:

¹The situation raised by the request should be distinguished from the situation where the mayor dies, resigns, or is removed from office. In that case, the president pro tempore becomes mayor, and no longer serves as a council member. The legislative authority must elect another president pro tempore from its own number. R.C. 733.25; R.C. 731.11.

A member of the legislative authority of a municipal corporation appointed under Section 731.04, Revised Code, as president pro tempore of the legislative authority, may preside over such authority in the absence of the president thereof, and when so presiding is entitled to vote once when there is a roll-call on a question, and in other cases where his vote would change the result, but may not vote to create a tie vote and then vote to decide the tie.

In reaching this conclusion, my predecessor was dealing with a city legislative authority, rather than a village legislative authority. In the case of a city, the president of the legislative authority, rather than the mayor, is the presiding officer of the council. However, like a village mayor, the president is elected specifically to that position rather than to the council as a member, and has a vote only in the case of a tie. See R.C. 733.09. The members of a city legislative authority also elect a president pro tempore from their own number. See R.C. 731.04. It is my opinion that the reasoning and conclusion of 1962 Op. No. 3203 apply to the situation you present. A president pro tempore of a village legislative council who serves as the presiding officer when the mayor is absent from the council meeting is entitled to vote once as a member of the council, although he may not vote to create a tie, and then vote to break the tie.

In conclusion, it is my opinion, and you are so advised, that the president pro tempore of a village legislative authority retains his right to vote on all matters as a member of the council while acting as the presiding officer of a council meeting when the mayor is absent from the meeting. (1962 Op. Att'y Gen. No. 3203, p. 643 approved.)