

## OPINION NO. 70-157

## Syllabus:

1. The immediate resignation of a village councilman becomes effective when it is submitted to the mayor and the other council members.

2. A resignation which has become effective may not be withdrawn. The position must be filled according to the appropriate provisions for filling a vacancy.

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To: J. Warren Bettis, Columbiana County Pros. Atty., Lisbon, Ohio  
By: Paul W. Brown, Attorney General, November 20, 1970

I have before me your request for an opinion which poses the following questions:

1. Is a village councilman's resignation effective upon the filing of the same or must there be some affirmative action taken prior to its withdrawal?

2. If the withdrawal of the resignation is made in writing by the councilman in question prior to any action by council on his resignation, does he therefore remain a councilman for his unexpired term?

In State, ex rel. Sawyer v. Pollner, 18 O.C.C. 304, 10 O.C. D 141 (1899), the Court held that in order for a public officer's resignation to be effective, "\* \* \* he must do something beyond his resignation, and that something is to convey the intelligence of his resignation to the officer who has the power to fill the vacancy." Section 731.43, Revised Code, states that:

"When the office of a member of the legislative authority of a municipal corporation becomes vacant, the vacancy shall be filled by election by the legislative authority for the unexpired term. If the legislative authority fails within thirty days to fill such vacancy, the mayor shall fill it by appointment."

In the situation in question the village councilman submitted to the mayor and the other members of the council a letter advising them of his intention to resign immediately. Thus, under the test in State, ex rel. Sawyer v. Pollner, supra, the resignation was effective.

In addition in State, ex rel. Orr, v. Board of Education, 23 O.C.C. (N.S.) 98 (1912), the Court cited the rule expressed in 23 Am. & Eng. Encyc. of Law (Second Edition), p. 424, as follows:

"An unconditional resignation to take effect immediately can not be withdrawn even with the consent of the power authorized to accept it, and it does not seem

to be material that the resignation had not been accepted. A contingent or a prospective resignation, however, can be withdrawn at any time before it is accepted, and after it is accepted it seems that it may be withdrawn with the consent of the authority accepting where no rights have intervened.

Consequently, it becomes clear that an acceptance is not necessary to the effectiveness of a resignation. When courts, on occasion, speak of the acceptance of a resignation they are concerned with one who is authorized to receive notice of a resignation and to act upon the notice in order to fill the vacancy. Therefore, it follows that the village councilman's resignation became effective when he expressed his intention to the mayor and the village council. Since the resignation had become effective, the councilman is without power to withdraw it, and the determination of who is to serve in the position must be made by the village council pursuant to Section 731.43, supra.

Therefore, it is my opinion and you are hereby advised that:

1. The immediate resignation of a village councilman becomes effective when it is submitted to the mayor and the other council members.
2. A resignation which has become effective may not be withdrawn. The position must be filled according to the appropriate provisions for filling a vacancy.