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A MEMBER OF A MUNICIPAL LEGISLATURE APPOINTED AS PRESIDENT *PRO TEMPORE*, MAY VOTE, WHEN PRESIDING, ON ROLL-CALL QUESTIONS AND TO VOTE ONCE WHERE HIS VOTE WOULD CHANGE THE RESULTS, BUT NOT TO CREATE A TIE AND THEN TO BREAK A TIE— §§733.09, R.C., 731.04, REVISED CODE.

SYLLABUS:

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 where 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.

Columbus, Ohio, August 10, 1962

Hon. Wm. H. Irwin, Prosecuting Attorney
Belmont County, St. Clairsville, Ohio

Dear Sir:

Your request for my opinion poses the following question :

In a non-charter city, when the president *pro tempore* of the legislative authority presides over such authority in the absence of the president of the legislative authority, may said president *pro tempore* vote on all matters or is he restricted to voting only in case of tie, as is the president.

Section 733.09, Revised Code, dealing with the president of the legislative authority of a city, reads as follows:

“The president of the legislative authority of a city shall be elected for a term of two years, commencing on the first day of January next after his election. He shall be an elector of the city, and shall preside at all regular and special meetings of such legislative authority, but he shall have no vote therein except in case of a tie.”

Section 731.04, Revised Code, provides for a president *pro tempore* of the legislative authority, reading as follows:

“Within ten days from the commencement of their term, the members of the legislative authority of a city shall elect a president *pro tempore*, a clerk, and such other employees as are necessary, and fix their duties, bonds, and compensation. Such officers and employees shall serve for two years, but may be removed at any time for cause, at a regular meeting of the legislative authority by a two-thirds vote of the members elected.”

The first question to decide is whether the president *pro tempore* may preside over the legislative authority in the absence of the president. Section 733.09, *supra*, provides that the president shall preside at *all* regular and special meetings. Section 731.04, *supra*, which provides for a president *pro tempore*, does not state his duties; nor am I able to find any other provision of law authorizing the president *pro tempore* to preside over the legislative authority. In fact, the only other statutory reference to the president *pro tempore* of a city which I have been able to find is that found in Section 733.08, Revised Code, which provides that on the death, resignation, or removal of the mayor the president of the legis-

lative authority becomes mayor and the president *pro tempore* becomes president.

On the other hand, it might logically be assumed that in providing for a president *pro tempore* the legislature intended that he have some duties other than merely replacing the president under Section 733.08, *supra*, when the president becomes mayor; and the generally accepted definition of the words "*pro tempore*" strengthens this assumption. In Ballentine's Law Dictionary with Pronunciations, at page 1039, the words "*pro tempore*" are defined as follows:

"For the time; temporarily; during the inability or absence of the regular or standing officer. * * *"

Further, under Section 731.45, Revised Code, the legislative authority of a municipal corporation "shall determine its own rules and keep a journal of its proceedings." In your letter of request it is stated that the particular legislative authority in question has adopted Robert's Rules of Order, Revised, to govern its proceedings. Rule 58 of that publication states, at page 240:

"If it is necessary for the chairman to vacate the chair the first Vice President, if there is one, should take the chair, and in his absence the next one in order should take it. If there is no vice president in the hall, then the chairman may, if it is necessary to vacate the chair, appoint a chairman *pro tem.*, but the first adjournment puts an end to the appointment, which the assembly can terminate before, if it pleases, by electing another chairman.* * *"

Finally if only the president could preside at meetings of the legislative authority, such meetings would necessarily stop whenever the president was absent for some reason or other, and such a situation could obviously impede the necessary transaction of business in many cases. I am reluctant to conclude that such a construction of Section 733.09, *supra*, should be adopted; and am of the opinion that Section 731.04 and 733.09, Revised Code, should be read together to ascertain the intent of the legislature in this regard.

In view of the foregoing, therefore, I am of the opinion that by designating a member of the legislative authority "president *pro tempore*," the legislature intended that such member would have the authority to preside over the legislative authority in the absence of the president.

As noted earlier, the president *pro tempore* is a member of the legislative authority. Sections 731.04 and 733.08, *supra*. Further, when he pre-

sides in the absence of the president there is no reason to conclude that he loses his status as a member. It would appear that he should remain a member and have the same right to vote that he enjoys when not presiding over the body. I have found no Ohio authority for this conclusion, but have found several cases in other jurisdictions to that effect. See *Michael v. State* (1909), 163 Ala. 425; *Haines, v. People ex rel. Squires* (1902), 18 Colo. App., 160; *Shugars v. Hamilton* (1906), 122 Ky. 606, 92 SW 564; *Feint v. Dumont* (1931), 108 NJL 245.

I am of the opinion, however, that the president *pro tempore*, when presiding, may vote only once on a question. That is, he may not vote to make a tie, and then vote to break the tie. He retains only his right as a member to vote for or against the pending question. Of interest in this regard is the statement of Roberts, *supra*, in rule 58 therein, at page 238, referring to the chairman of a meeting, and reading:

“If a member of the assembly, he is entitled to vote when the vote is by ballot (but not after the tellers have commenced to count the ballots), and in all other cases where the vote would change the result. Thus, in a case where a two-thirds vote is necessary, and his vote thrown with the minority would prevent the adoption of the question, he can cast his vote; so, also, he can vote with the minority when it will reduce a tie vote and thus cause the motion to fail; but he cannot vote twice, first to make a tie, and then to give the casting vote. * * *”

Under the *Roberts* rule, the chairman may vote when the vote is by ballot and in other cases where his vote would change the result. Applied to the legislative authority of a municipal corporation, the president *pro tempore* may vote on all roll-call votes and in other cases where his vote would change the result.

To conclude, therefore, it is my opinion and you are advised that 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 where there is a roll-call vote 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.

Respectfully,

MARK McELROY

Attorney General