

200.

RESIGNATION OF MAYOR, DEFINITELY GIVEN, EFFECTIVE, WHEN—PRESIDENT PRO TEM OF VILLAGE FILLS VACANCY* ENTITLED TO SALARY, WHEN.

SYLLABUS:

1. *The resignation of a mayor which is definitely given to the council requires no formal acceptance to become effective.*

2. *A president pro tem of a village who fills a vacancy in the mayor's office under Section 4216, General Code, becomes entitled legally to the salary attached to the office of the mayor.*

COLUMBUS, OHIO, March 3, 1937.

Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.

GENTLEMEN: This will acknowledge receipt of your recent communication requesting an opinion upon the following questions:

“QUESTION. If the mayor of a village presents his resignation as mayor, is it necessary that such resignation be accepted by formal action of council, or is it effective whether or not council takes any action on the matter?”

This suggests another question as to whether the salary of the mayor may be paid to the president pro-tem of council from the date the resignation was presented, since such officer assumes the duties of the mayor under the law from the time of resignation of the incumbent of that office.”

In the absence of statutory requirement no particular form is deemed necessary in the matter of resignation of public officers. Any procedure which definitely conveys the intent to resign to the proper persons or body authorized to receive such resignations is sufficient. The Ohio rule as to the necessity of an acceptance is admittedly in need of clarification. However, the conceded authority and the one generally followed is the case of *Reiter vs. State ex rel.*, 51 O. S. 74, in which the following statement of law is given:

“The common law rule as to acceptance of resignations has been abrogated in Ohio to the extent at least of authorizing the filling of the vacancy. The resignation of an office takes effect at once without acceptance by any one, and the holding of an office is not compulsory.”

The opinion of the court in this case, *Reiter vs. State ex rel.*, supra, further stated that unless the statutes expressly required an acceptance of the resignation of an elected officer, an acceptance would not be necessary to the validity of a resignation.

Nowhere in the General Code of Ohio are there provisions which expressly or impliedly state that an acceptance by the council is necessary before the mayor can resign. In view of these facts and the hereinabove discussed principles of law, it is my opinion that the resignation of a mayor which is definitely given to the council becomes effective at once and requires no formal acceptance on the part of the council.

A valid resignation creates a vacancy in office and when the office is that of the mayor of a village, Section 4216, General Code applies.

“At the first meeting in January of each year, the council shall immediately proceed to elect a president pro tem from their own number, who shall serve until the first meeting of the council in January next after his election. From time to time the council may provide such employes for the village as they may determine, and such employes may be removed at any regular meeting by a majority of the members elected to council. When the mayor is absent from the village or is unable for any cause to perform his duties, the president pro tem of council becomes acting mayor, and shall have the same powers and perform the same duties as the mayor.”

Under the terms of this section the president pro tem of council becomes mayor assuming all the powers and duties of that office. The well established principle that a salary pertaining to an office is an incident of the office itself, has been affirmed in two opinions of this office. (1927, O. A. G., Volume III, page 2152, 1935, O. A. G., Volume 1, page 742.)

It is therefore my opinion that when there is a vacancy in the office of the mayor, the president pro tem of council becomes acting mayor under Section 4216, General Code, and is entitled to be paid the salary incident to that office.

Respectfully,

HERBERT S. DUFFY,

Attorney General.