

OPINION
44-77

March 20, 1944 (OPINION)

OFFICES

RE: Incompatibility

I have your letter of March 8, advising that your mayor left the city to join the Navy last October, and did not resign as mayor, and you would like to know whether you can elect a mayor to take his place at the coming spring election.

We have received similar requests from several other persons, raising almost identical questions. Section 51 of chapter 221 of the 1941 Session Laws provides that any officer of a municipality, who is inducted into federal service, shall when ordered by proper authority to active non-civilian service, be entitled to a leave of absence from such civil employment for the period of such active service, without the loss of status or efficiency rating. The mayor of your city upon entering the armed forces is, therefore, entitled to a leave of absence for the period of his service in the navy. Such absence from his duties as mayor of the city must be considered as temporary, because he will not return to his position immediately after the close of the present war, unless, in the meantime, another regular election has been held and a new mayor elected after the present term of your mayor has expired.

Section 3590 of the 1913 Compiled Laws provides for the election of a president and a vice president of the city council. The act then goes on to provide: "The president of the city council shall, in the absence or temporary disability of the mayor, be presiding officer of the council and shall, during the absence of the mayor from the city or his temporary disability, be acting mayor, and shall possess all the powers of the mayor. In the absence or disability of the mayor and president of the city council, the vice president shall perform the duties of the mayor and president of the council".

It is my opinion, therefore, that the president of the city council would become acting mayor upon the induction of the mayor into the navy. The president of the council, being also an alderman, would, however, have the right to vote on all questions coming before the council.

We have considered the provisions of chapter 179 of the 1943 Session Laws, which provides for the filling of vacancies in public office, caused by military service. In my opinion, this chapter would not be applicable to the office of mayor, since we already have a special statute providing for the filling of the office of mayor during the temporary absence of the duly elected mayor.

In the event that the present mayor should tender his resignation rather than merely take a leave of absence, as he is entitled to do under the provisions of section 51 of chapter 221 of the 1941 Session Laws, then and in that event, the vacancy occurring in the office of mayor would be filled by election, if the unexpired term of the present mayor would be more than one year. If the remaining term of the mayor at the time of his resignation is less than one year, then the city council would elect one of the members to act as mayor until the next annual election. See section 3566 and 3567 of the 1913 Compiled Laws.

You also inquire whether a city councilman can also take a position with the city and draw wages for work done as such employee of the city, while he is a city alderman. In our opinion, it would be absolutely illegal for a member of the city council to act as an employee of the city, because the statute specifically prohibits any member of the city council from entering into any contract with the city. Clearly, it would be against good public policy to have a man act on a board and employ himself as an individual. This would lead to apparent abuses which the legislature had tried to prevent by enacting the statute which prohibits any person, who is a public officer, from being directly or indirectly interested in such contract.

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