

## DUTIES OF COUNCIL PRESIDENT IN ABSENCE OF THE MAYOR

(From City Attorney's Office 10-17-95)

### Questions Presented - Brief Answers

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**Q. Under Wisconsin Statutes on Cities and the Madison General Ordinances, does the President of the Common Council fulfill the duties and responsibilities of the Mayor when the Mayor is absent due to illness?**

A. Yes. Under Wisconsin Statutes on Cities and the Madison General Ordinances, the President of the Common Council does fulfill the duties and responsibilities of the Mayor when the Mayor is absent due to illness, or otherwise unable to carry out the duties of office, with the limitation that the Council President may not approve acts of the Council which the Mayor has disapproved by filing objections with the Clerk.

**Q. Under Wisconsin Statutes on Vacancies, is a permanent vacancy of office ever created when the Mayor cannot perform the duties of office due to illness?**

A. Yes. Under Wisconsin Statutes on Vacancies a permanent vacancy of office may be created due to the illness of a public official if the illness is such that the official is found by a competent tribunal to be incompetent to understand the objective of the elective process, or the tribunal places the public official under guardianship.

**Q. Under Wisconsin Statutes on Vacancies, does the Council President become "Acting Mayor" when a permanent vacancy arises?**

A. No. Under Wisconsin Statutes on Vacancies the Council President does not replace the Mayor when a permanent vacancy arises in Cities of the 2nd, 3rd, or 4th class; rather, the Common Council appoints a replacement until a special election is scheduled to fill the vacancy.

**Q. Under Madison General Ordinances, are the duties of the Council President specified when the President must fulfill the duties of "Acting Mayor?"**

A. No. Under Madison City Ordinances the duties of the Council President are not specified when fulfilling the duties of "Acting Mayor" except to provide that the President of the Council shall preside at Council meetings in the absence of the Mayor, and shall succeed the Mayor in times of national emergency or attack if the Mayor is unable to act.

### Applicable Statutes and Ordinances

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Wis. Statutes on Cities, Sec. 62.09(5)(d), Wis. Stats.:

- (d) If any officer be incapacitated or absent from any cause the Common Council may appoint some person to discharge the officer's duties until the officer returns or until such disability is removed.

Wis. Statutes on Cities, Sec. 62.09(8)(e), Wis. Stats.:

- (e) The council at its first meeting subsequent to the regular election and qualification of new members, shall after organization, choose from its members a president, who, in the absence of the Mayor, shall preside at meetings of the council, and during the absence or inability of the Mayor shall have the power and duties of the Mayor, except that the president shall not have power to approve an act of the council which the Mayor has disapproved by filing objections with the clerk. The president shall when so officiating be styled "Acting Mayor."

Wis. Statutes on Vacancies, Sec. 17.23(1)(a), Wis. Stats:

17.23 Vacancies in city offices; how filled. (1) General and special charter cities. Vacancies in offices of cities operating under the general law or special charter shall be filled as follows:

- (a) In cities of the 2nd, 3rd or 4th class, in the office of Mayor, except as provided in s. 9.10, by appointment by the common council. In the office of alderperson, by the common council, except as provided in s. 9.10. A person so appointed shall hold office until a successor is elected and qualified. A successor shall be elected for the residue of the unexpired term on the first Tuesday of April next after the vacancy happens, in case it happens no later than December 1 preceding the first Tuesday in April, but if the vacancy happens after December 1 preceding the first Tuesday in April and before that day, then the successor shall be elected on the first Tuesday in April of the next ensuing year; but no election to fill a vacancy in such office may be held at the time of holding the regular election for that office.

Madison General Ordinances, STANDING RULES FOR THE GOVERNMENT OF THE COMMON COUNCIL, Sec. 2.205:

The Common Council shall at its organizational meeting on the third Tuesday of April of each year, elect one member of the Council to act as president of the Council and another member to act as president pro tem of the Common Council, pursuant to the provision of Section 62.09(8)(e), Wisconsin Statutes. The president pro tem of the Common Council shall act during the absence, inability or disability of the president.

Madison General Ordinances, CONTINUITY OF GOVERNMENT, Sec. 3.02(1) & (3):

- (1) Policy and Purpose. Because of the existing possibility of an attack upon the United States . . . in the event of such an attack, to assure the continuation of effective, legally constituted leadership . . . it is necessary to provide for emergency interim officers who can exercise the powers and discharge the duties of the Mayor. . .
- (3) Designation, Status, Qualifications and the Term of Emergency Interim Successors. Succession of the office of Mayor shall be in the following order: president of the Common Council, president pro tem of the Common Council, and two (2) emergency interim successors. . .

## **Discussion**

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The role of the President of the Common Council in the absence of the Mayor is addressed in several statutes, briefly by the Madison General Ordinances, and only minimally by case law. If the need arises to fulfill Mayoral duties in the Mayor's absence, it is clear from Sec. 62.09(8)(e), Wis. Stats., that the President of the Council does fulfill the role of "Acting Mayor" during the "absence or inability of the Mayor." to clarify the meaning of "absence" of the Mayor, *Olson v. Lahiff*, 146 Wis. 490 (1911), states that absence must be "construed reasonably" and can be considered "effective" absence. *Id.* at 492.

In *Olson*, the President of the Common Council of Hudson appointed members of the Police and Fire Commission while the Mayor was out of town for the day. The court held that because the Mayor would have had the opportunity to consider these appointments for a one week period, the Council President did not have to act on the Mayor's behalf during the Mayor's one day trip away from the City.

Our Ordinances also indicate that in the "absence, inability or disability" of the President, the President Pro Tem is to fulfill the President's duties.

## **Conclusion**

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In summary, Sec. 62.09(8)(e), Wis. Stats., states that the President of the Common Council is to perform the duties as "Acting Mayor" during temporary absences of the Mayor. Although we can see from *Olson* that the President does not need to act on routine matters which the Mayor will be able to complete upon return, it is obvious that the duties of the Mayor of Madison today are more complex than that of the Mayor of Hudson in 1911, making the assessment of necessary vs. routine duties more difficult.

In the case of a permanent Mayoral vacancy, in cities of the 2nd class, Sec. 17.23(1)(a), Wis. Stats., requires the Common Council to appoint a replacement until the specified time of a new election.

Based on the foregoing, it would appear that the President of the Council may be called upon to act as Mayor during temporary absences in matters which require immediate attention. In the case of permanent vacancy, the position would be filled by Council appointment until a special election, as long as Madison remains a 2nd class city.