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DEPARTMENT OF JUSTICE
CIVIL DIVISION
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OPINION 17-0092

Mr. H. Todd Nesom
District Attorney of Allen Parish
Post Office Box 839
Oberlin, LA 70655

71 MUNICIPALITIES
77 OFFICERS – Local & Municipal; Selection,
Qualifications & Tenure; vacancies

La. R.S. 33:405(A)
La. R.S. 33:441(B)

The mayor pro tempore may not preside over the mayor's court. The magistrate presiding over a mayor's court in the mayor's absence must be an attorney. The board of aldermen may, upon request of the mayor, appoint one or more attorneys to preside over the mayor's court.

Dear Mr. Nesom:

Our office received your request for an opinion as to whether a mayor pro tempore of a Lawrason Act municipality may preside over Mayor's Court with the written consent of the mayor. Furthermore, you clarified that the mayor pro tempore is not a lawyer. Thus, it is our understanding that you request guidance as to whether a non-attorney appointee may preside over a mayor's court.

In your request, you direct our attention to La. R.S. 33:405(A)(3)-(6), which detail the functions, duties, and powers of the mayor pro tempore. However, La. R.S. 33:441(B)(1) specifically addresses this issue and provides for the designation of a court magistrate to preside over the mayor's court in the mayor's stead. The provision states:

Notwithstanding any other provision of law to the contrary, the board of aldermen in its discretion may, upon request of the mayor, appoint one or more attorneys who shall be designated as court magistrate and who shall serve at the pleasure of the mayor and may from time to time be designated by the mayor to serve in his stead as the presiding official over the mayor's court. Whenever a magistrate is so designated by the mayor to preside over the mayor's court, he shall exercise the powers and authority of the mayor over said court. The board of aldermen shall fix and pay the salary of each magistrate, if any are appointed.

Under this provision, it is the board of aldermen who are given the authority to appoint a court magistrate, who is required to be an attorney. See La. Atty. Gen. Op. No. 97-94.

"If two statutes are in conflict, the one more specifically directed to the matter at issue prevails as an exception to the statute that is more general in character." *Goldking Properties v. Primeaux*, 477 So. 2d 76, 79 (La. 1985). Thus, the provisions of La. R.S. 33:441(B)(1) apply and prevail over the more general provision of La. R.S. 33:405(A), and restrict the mayor pro tempore or any other non-attorney from presiding over a mayor's court.

We hope this sufficiently answers your inquiry; however, if we may be of further assistance, please do not hesitate to contact our office.

With best regards,

JEFF LANDRY
ATTORNEY GENERAL

BY: 
Luke Donovan
Assistant Attorney General