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OPINION 25-0040

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77 OFFICERS – Local & Municipal

La. R.S. 33:405

Answers questions concerning the rights and duties of the mayor pro tempore of a Lawrason Act municipality.

Dear Mr. Cahill:

We received your request concerning the rights and duties of the mayor pro tempore of a Lawrason Act municipality when he is presiding over a meeting in the absence of the mayor.

Question #1: When the mayor pro tempore is presiding over a meeting in the absence of the mayor, does he have the right to vote on issues before the board in his capacity as an alderman, or can he only vote to break a tie like the mayor would if he were in attendance?

Conclusion: The mayor pro tempore retains his right to vote as an alderman.

The Lawrason Act provides that the mayor shall preside at all meetings of the board of aldermen, and in case there is an equal division, he shall give the deciding vote. La. R.S. 33:405(A)(1). The Act further states that the board of aldermen shall select one of its members to be mayor pro tempore. If the mayor is unable to attend a meeting of the board of aldermen, the mayor pro tempore presides at the meeting in the absence of the mayor. Any such person shall have all rights and powers granted to the mayor with regard to presiding at any such meeting. La. R.S. 33:405(A)(3)(a). Thus, the mayor pro tempore has the authority to provide the deciding vote where there is a tie vote of the board of aldermen.

Furthermore, this office has repeatedly opined that the mayor pro tempore retains his right to vote as an alderman. See La. Atty. Gen. Op. Nos. 11-0275, 01-0036, 93-0669, and 93-0398A. In those opinions, our office determined that, in the absence of a specific prohibition that would prevent the mayor pro tempore from exercising his power to vote as an alderman, he must be deemed to have retained that power. Otherwise, where a councilman is selected from a subdistrict within the municipality his constituency would be without representation, which presents equal protection—one-person-one-vote complications. You suggest that this is not a concern in your situation because the council

members in the Town of Grand Isle are elected at large rather than in subdistricts. Finally, if the legislature had intended to prevent the mayor pro tempore to vote as an alderman while presiding over the council as mayor pro tempore, it would have provided an express prohibition in the Lawrason Act.

Nevertheless, as you acknowledge in your letter, the mayor pro tempore does not have the ability to vote on a matter as an alderman and then vote again to break a tie. Therefore, he must choose whether he will vote in his capacity as an alderman or wait to break any tie that may exist.

Question #2: Does the attendance of the mayor pro tempore count toward the existence of a quorum, noting that the mayor does not count toward a quorum?

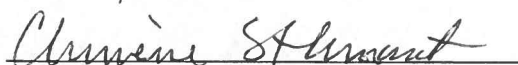
Conclusion: The attendance of the mayor pro tempore counts toward the existence of a quorum.

The Lawrason Act states that a majority of the members of the board of aldermen constitutes a quorum of the board at any meeting, whether regular, special, or emergency. La. R.S. 33:405(E). As discussed above, the mayor pro tempore does not lose his status as an alderman simply because he is presiding over a meeting in the absence of the mayor. Thus, it follows that the mayor pro tempore should retain his status as an alderman for the purposes of determining a quorum. See *also* La. Atty. Gen. Op. Nos. 11-0275, 04-0359 (accord). Thus, the mayor pro tempore counts toward the existence of a quorum.

We hope that this opinion has adequately addressed the legal issues you have raised. If our office can be of any further assistance, please do not hesitate to contact us.

With best regards,

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BY: 
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