



STATE OF KANSAS

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February 12, 1982

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ATTORNEY GENERAL OPINION NO. 82- 35

Dr. G. M. Wells  
Mayor, City of Enterprise  
120 South Factory, Box 265  
Enterprise, Kansas 67441

Re: Cities, Third Class -- Election, Appointment and  
Removal of Officers -- Removal of Council Member  
Because of Frequent Absences from Council Meetings

Synopsis: A mayor has no authority to remove a city council member from office. A city council member may be removed from office if the city council accepts the council member's resignation, the qualified electors of the city recall said member, or the council member has been ousted pursuant to K.S.A. 60-1205. Cited herein: K.S.A. 15-201, 25-4318, 60-1205.

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Dear Dr. Wells:

You seek advice regarding what procedures may be taken by you as mayor to remove a city councilman from office. You state that the councilman is frequently absent from council meetings because of health problems. We also note from your letter that the councilman offered his resignation, but the other council members refused to accept it.

If a vacancy occurs on the city council, K.S.A. 15-201 requires the mayor, by and with the advice and consent of the remaining councilmen, to appoint a suitable elector to fill the vacancy. However, this power may not be invoked until such time as a vacancy occurs.

In the case of a resignation, it has long been the rule in Kansas that the resignation of a public officer is not complete until the proper authority accepts said resignation.

Dr. G. M. Wells

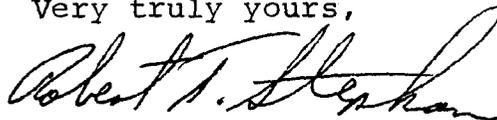
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Without such acceptance, no vacancy occurs. State ex rel. Topeka v. Clayton, 27 Kan. 442 (1882). Since in this instance the councilman's resignation was not accepted by the council, his office is not vacant and no appointment may be made. We call your attention to Attorney General Opinion No. 82-11 which addresses the issue of when a vacancy exists in a township office, and Attorney General Opinion No. 79-109, regarding the requirement that city council members act in "good faith" in approving appointments.

There is no authority which permits a mayor to take any steps to remove a councilman from office under the circumstances you have presented. We note however, that the qualified electors of Enterprise may seek recall of the councilman pursuant to K.S.A. 25-4318 et seq., if they believe he is failing to fulfill his duties. Finally, we call your attention to the Kansas ouster statute, K.S.A. 60-1205, which would permit removal of a public officer for wilfull neglect of duty if such could be proved, although the latter seems inappropriate in this instance.

In conclusion, a mayor has no authority to remove a city council member from office. Where a vacancy exists in the office of city councilman, the mayor with the advice and consent of the remaining council members may appoint a person to fill the vacancy. However, a vacancy does not exist where a councilman's resignation has not been accepted by the council.

Very truly yours,



ROBERT T. STEPHAN  
ATTORNEY GENERAL OF KANSAS



Brenda L. Hoyt  
Assistant Attorney General

RTS:BJS:BLH:hle

Enclosures: Att'y Gen. Op. 79-109  
Att'y Gen. Op. 82-11