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July 19, 1990

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ATTORNEY GENERAL OPINION NO. 90- 85

Richard Sanborn
Mulvane City Attorney
434 North Market, Suite 200
Wichita, Kansas 67202-2012

Re: Cities of the Third Class--Powers and Duties of the
Mayor--Vacancy in Office of Mayor

Synopsis: K.S.A. 1989 Supp. 15-311 prescribes that in case of temporary absence of the mayor, "the president of the council for the time being shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the mayor, other than the appointment of officers pursuant to K.S.A. 15-204 and amendments thereto . . . until the mayor shall return." Thus, in the temporary absence of the mayor, the president of the council may exercise the mayoral power under K.S.A. 15-201 to fill vacancies in the city council until the next election for the office. Cited herein: K.S.A. 15-201; K.S.A. 1989 Supp. 15-204; 15-311.

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Dear Mr. Sanborn:

You request our interpretation of K.S.A. 1989 Supp. 15-311. Specifically, you ask whether the president of the council may, in the absence of the mayor from the city, make an appointment to fill the unexpired term of a councilmember who has resigned.

K.S.A. 1989 Supp. 15-311 prescribes that in case of temporary absence of the mayor "the president of the council for the time being shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the mayor, other than the appointment of officers pursuant to K.S.A. 15-204 and amendments thereto . . . until the mayor shall return." As the underscored portion of the last quoted statute indicates, the mayor's power to appoint city officers does not devolve upon the president of the council in case of the mayor's temporary absence. However, the mayor's power to fill council vacancies is not conferred by K.S.A. 1989 Supp. 15-204, but rather by K.S.A. 15-201, which provides, in part, as follows:

"In case of a vacancy in the council occurring by reason of resignation, death, or removal from office or from the city, the mayor, by and with the advice and consent of the remaining councilmembers, shall appoint an elector to fill the vacancy until the next election for that office."

As the legislature did not exclude the president of the council, in the temporary absence of the mayor, from exercising the power of appointment prescribed by K.S.A. 15-201, it is our opinion that such power devolves upon the council president under K.S.A. 1989 Supp. 15-311. Thus, in the temporary absence of the mayor, the president of the council may exercise the mayoral power under K.S.A. 15-201 to fill vacancies in the city council until the next election for the office.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General