

OPINION
49-52

October 21, 1949 (OPINION)

ELECTIONS

RE: Resignation of Mayor

Your letter of October 19, re the situation in your city resulting from the resignation of your mayor, has been received and referred to my desk.

You state that your then mayor resigned on July 5, 1949; that your next regular city election will be held in April, 1950; that your city council accepted such resignation; that your council, on July 13th, elected one of your aldermen to act as mayor until the next regular election. This all complies with the provisions of section 40-0816 N.D.R.C. 1943. You ask two questions:

1. Does Mr. McCullough serve in the dual capacity as Mayor and as Alderman from the Second Ward? If not, is there a vacancy in the office of Alderman from the Second Ward and should this vacancy be filled? How?
2. We have three Wards in Casselton with two Aldermen from each Ward. If Mr. McCullough is still serving as Alderman from the Second Ward and has a vote in the Council as such, how would situation be solved where a tie vote in the Council occurred, i.e. three Aldermen voting aye on a proposition and three voting nay. It does not seem reasonable that Mr. McCullough should have his vote as Alderman and the the deciding vote as Mayor."

It is our opinion that, under the provisions of said section, the alderman so elected by the council to act as mayor, Mr. McCullough, serves in a dual capacity - both as alderman from his ward, and as mayor. Of course he must act as acting mayor and not as mayor. but the statute gives him "all the rights and powers of the mayor until the next election and until a mayor is elected and qualified."

His election by the council to act as mayor did not deprive him of any of his powers or duties as alderman, and did not cause a vacancy in the office of alderman.

One of the powers of the mayor is to cast the deciding vote in case of a tie, and, under the statute, Mr. McCullough has that power as acting mayor. In voting on any matter before the council, he casts his vote as alderman, and if a tie results, he, as acting mayor, breaks the tie by his vote as acting mayor. Whether or not this seems reasonable is beside the question, since the statute clearly provides that, besides his power as alderman, he has the additional powers of mayor.

WALLACE E. WARNER

Attorney General