



OLR RESEARCH REPORT

March 4, 2011

2011-R-0120

TEMPORARY MAYORAL ABSENCES

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You asked for information concerning situations where a mayor is temporarily unable to carry out the duties of office. You were specifically interested in any court cases concerning this issue. You also asked for examples of Connecticut municipalities with charters that address this situation.

SUMMARY

This report discusses two aspects of temporary succession, (1) the circumstances under which a chief executive is determined to be absent or disabled and (2) the acting chief executive's powers. Because there were few cases concerning mayors, we broadened the report to include cases involving governors.

We could not find any Connecticut cases pertaining to when a mayor is considered absent or disabled. In Connecticut, the law appears to be silent on the issue of temporary mayoral absences, but some municipalities have addressed this issue in their charters. We provide a selection of such provisions at the end of the report.

Courts around the country are divided on when a chief executive is considered absent. Some, including the Connecticut Supreme Court (in a case involving the governor), have ruled that an executive is absent anytime he or she is outside of his or her jurisdiction's boundaries. Others have ruled that simply being outside the boundaries is not enough to transfer power to the acting executive. We were unable to find any cases concerning an executive's temporary disability.

Similarly, courts around the country are split on what powers an acting executive may exercise, even in situations where a charter or constitution grants them full powers. Some have held that an acting executive's powers in the short term are limited to routine matters, while others have ruled that the acting executive has full powers immediately.

WHEN THE ACTING EXECUTIVE ASSUMES POWER

Absence

Courts are split on when a chief executive is considered absent. Some have held that merely being outside of his or her jurisdiction is enough to transfer power to the acting executive. For example, in 1981, the Connecticut Supreme Court interpreted Article Four, Section 18 of the state constitution to require a transfer of power to the lieutenant governor anytime the governor is out of state. It ruled that a rendition warrant used to arrest someone was invalid because the governor executed it while out of the state. According to the court's opinion, the constitution "evinces a purpose of having in the state at all times someone capable of performing the duties and exercising the powers of the office of governor" (*Bratsenis v. Rice*, 183 Conn. 7 (1981)).

In other jurisdictions, courts have instead favored a concept known as "effective absence." Under this concept, power transfers to an acting executive only when the absence effectively debilitates or prevents the executive from fulfilling the duties of office. A 1991 decision by the Missouri Supreme Court illustrates this concept. In that case, the governor faxed a letter from Washington D.C. directing that his facsimile signature be affixed to various documents, such as appointments and proclamations. The secretary of state, however, refused to attest and authenticate these documents. In ruling for the governor, the court stated that his "temporary absence was not such as to disable him from performing the duties of his office" (*State ex rel. Ashcroft v. Blunt*, 813 S.W.2d 849 (1991)). In a 1966 ruling, the Nevada Supreme Court stated that "the crux of a provision for succession in the event of 'absence' is the state's immediate need for a specific act or function" (*Sawyer v. First Judicial Dist. Court*, 82 Nev. 53 (1966)).

In Connecticut, Hartford's charter, for example, addresses this issue by stating that the mayor will not be considered temporarily absent when outside the city if he or she is in contact with the chief operating officer through electronic or voice communications.

Disability

We were unable to find any court cases concerning a chief executive's disability. While laws and charter and constitutional provisions typically provide for temporary succession in the event of a disability, many of them fail to specify the process for declaring a chief executive disabled. A 2007 report by the National Governors' Association found that it is one of the "less clearly defined areas of state succession provisions. State legal provisions are often vague on specific qualifications for incapacity...and most do not even address the issue of disability-based gubernatorial incapacity."

In Connecticut, the law provides for a Council of Gubernatorial Incapacity to determine whether the governor is unable to serve. The council consists of nine members: the Supreme Court chief justice, the House speaker, president pro tempore of the Senate, the House and Senate minority leaders, and four gubernatorial appointees. It convenes upon either a declaration by the lieutenant governor or a majority of the council that the governor is unable to serve. A two-thirds vote is required to declare the governor unable to carry out the duties of office ([CGS § 3-1a](#)).

At the municipal level, Middletown's charter, for example, requires two physicians, upon a unanimous vote by the council, to examine the mayor before he or she is deemed disabled. However, most other charters we looked at lack specific provisions for determining whether the mayor is unable to fulfill the duties of office.

ACTING EXECUTIVE'S POWERS

Courts are also split on what powers an acting executive can exercise. In some cases, they have ruled that if an acting executive is granted full executive powers, then he or she can exercise any of those powers regardless of the length of an absence or disability. For instance, in 1979, the California Supreme Court ruled that the acting governor had the right to make a judicial nomination while the governor was out of state. However, because the nominee still needed confirmation by the state's Commission on Judicial Appointments, the court also upheld the governor's subsequent withdrawal of the nomination (*In re the Petition of the Commission on the Governorship of California*, 26 Cal. 3d 110 (1979)). In 1941, the Arkansas Supreme Court ruled that the Senate president pro tempore, acting as governor, was within his rights to veto two bills while the governor and lieutenant governor were out of state (*Walls v. Hall*, 202 Ark. 999 (1941)). In Mississippi, the state supreme court ruled

in 1923 that the acting governor was justified in pardoning a prisoner (*Montgomery v. Cleveland*, 134 Miss. 132 (1923)). In each of these cases, the governors were out of state for at most a few days.

In other cases, courts have ruled that if the executive is absent for a short duration, then the acting executive's power is limited. Two 1924 decisions by the Michigan Supreme Court illustrate this concept. In the first, the acting mayor terminated the city's superintendent of public works two days after the mayor left on a trip. In ruling against the acting mayor, the court stated that although the charter granted full mayoral powers to the acting mayor, "it would be intolerable to permit such officers to be removed by the acting mayor unless the absence of the mayor was so prolonged as in effect to make the acting mayor the actual mayor of the city" (*Cytacki v. Buscko* 226 Mich. 524 (1924)). Later that year, the court upheld the removal of a city controller by the acting mayor that occurred more than three months after the mayor became ill. The court referenced its *Cytacki* decision in distinguishing the two situations (*Nagel v. Martin* 229 Mich. 282 (1924)).

To address this issue, some Connecticut municipal charters (including those of Hartford, Stamford, and Waterbury) prohibit the acting mayor from making appointments or removing people from appointed positions until 30 days have passed. New Haven's prohibits appointments and removals by the acting mayor at any time, with the exception that he or she may make temporary appointments to vacant positions.

CONNECTICUT MUNICIPAL CHARTERS

Table 1 lists selected municipalities that have charter provisions concerning a mayor's temporary absence or disability. They typically provide for the council president to serve as acting mayor.

Table 1: Selected Charters that Address Temporary Mayoral Absences

<i>Municipality</i>	<i>Provision</i>
Bridgeport	In the event that the mayor is temporarily absent or temporarily disabled and is, because of such absence or disability, unable to perform the duties of his office, the president of the city council shall possess all of the powers and perform all of the duties of the mayor until the mayor is able to act (Chapter 2, Section 3).
Bristol	The mayor shall, within one month after his or her election, designate one of the councilmen to be acting mayor and may at any time appoint another councilman to be acting mayor. The acting mayor shall have authority to discharge the duties of the mayor whenever the mayor for any reason is unable to do so (Section 16(f)).
Hartford	In the event that the mayor is temporarily absent or disabled and is, because of such absence or disability, unable to the perform the duties of the mayor's office, the council president, or in the president's absence or disability, such member as the council shall designate, shall exercise the power of the mayor, except that until such absence or disability of the mayor has continued for 30 days, the acting mayor shall not have power to appoint or remove officers or employees. The compensation for the acting mayor shall be determined by the council but shall in no event exceed in proportion the salary of the mayor. Absence from the city shall not constitute temporary absence in the event the mayor is in contact with the chief operating officer by electronic or voice communications. The council shall provide by ordinance a procedure for determining said absence or disability (Chapter 5, Section 4).
Middletown	<p>B. A voluntary temporary vacancy in the office of the mayor may occur in the following manner:</p> <ol style="list-style-type: none"> 1. Notification by the mayor to the deputy mayor and the council of a temporary vacancy. 2. Termination of above temporary vacancy in office shall be by notification by the mayor to the deputy mayor of such termination. <p>C. An involuntary temporary vacancy in the office of mayor may occur in the following manner:</p> <ol style="list-style-type: none"> 1. In the event of the mayor's inability to carry out the duties of the office of mayor by reason of physical and/or mental disability, the Common Council shall, upon unanimous vote of the council at a regular or special meeting duly warned for that purpose, cause the mayor to submit to examination by two physicians licensed to practice medicine in the State of Connecticut who shall submit written reports to the city/town clerk as to the ability of the mayor to carry out the duties of the office of mayor. If such examination substantiates the mayor's inability to carry out the duties of the office of mayor, the city/town clerk shall then declare a temporary vacancy. 2. Termination of said temporary vacancy shall be confirmed by two physicians licensed to practice medicine in the State of Connecticut that the mayor is physically and/or mentally able to carry out the duties of the office of mayor who shall submit reports to the city/town clerk who shall notify the Common Council of the mayor's ability to resume office (Chapter 2, Section 8).

Table 1: Continued

<i>Municipality</i>	<i>Provision</i>
Middletown Continued	Upon commencement of the mayor's term of office, the mayor shall appoint a deputy mayor who shall be a member of the Common Council and shall be of the same political party as the mayor, unless there are no council members of the same party, in which case the mayor may appoint any member of the council. Said appointment shall be subject to confirmation by the Common Council. The deputy mayor shall act as mayor during any temporary vacancy in the office of mayor or until a permanent vacancy in the office of mayor has been filled as provided for in Chapter II, Section 8 of this charter. The salary of the deputy mayor shall be determined by the Common Council (Chapter 4, Section 2A).
New Britain	<p>Whenever the mayor shall be absent from the city or prevented by sickness or other cause from attending to the duties of office, the president pro tempore of the Common Council, and, in the absence of said president pro tempore, the following members of the Common Council (in descending order) shall serve as acting mayor: the party leader of the mayor's political party, the leader of the political party having the greatest representation on the Common Council (other than the mayor's political party) and then to the senior member of said Common Council of the mayor's party, being the member who has occupied such office for the greatest number of years. In the case of equal seniority the Common Council shall select said acting mayor from among those members of equal seniority. The acting mayor shall act as mayor, and shall possess, exercise, and enjoy all the rights, powers, and duties of the mayor during the continuance of such absence or inability.</p> <p>In case the mayor of the city shall, by any cause whatsoever, be totally incapacitated physically or mentally for a period exceeding sixty days from performing the duties of mayor, the Common Council may, after summons and hearing in the same matter concerning officers and employees of the mayor, remove the mayor and declare the office of mayor to be vacant on account of such incapacity for said period, and the person so removed may appeal from the order of removal in the manner provided by ordinance (Article 5, Section 8).</p>
New Haven	If the mayor shall be prevented from attending to the duties of his office by absence from the city or by illness or by any other cause, the president of the board of aldermen of the city and, in his absence or disability, the president pro tempore of said board, shall act as mayor until the mayor or president of the board, as the case may be, shall be able to assume the duties of the office. Such acting mayor shall have all of the rights, powers and duties of the mayor except that he shall not have or exercise any power of appointment or removal. He may, however, temporarily suspend any appointive officer or any employee of the city for cause, which cause shall not be political, and in the event of a vacancy in any office to which the mayor has the power of appointment he may temporarily fill the same. Any such temporary suspension or appointment shall automatically end upon the resumption of his duties by the mayor. For the second and each successive consecutive day that an acting mayor actually performs the official duties of mayor he shall be compensated for his services at the rate of one hundred dollars per day or such other amount that the board of aldermen may approve. If the mayor shall be prevented from attending to the duties of his office by absence from the city or by illness or by any other cause for more than twenty consecutive days, such acting mayor shall receive, commencing the twenty-first day, the same amount as salary as would be paid to the mayor (Article 5, Section 13).
Shelton	If the office of mayor is vacant for the reason of temporary disability or absence from the city, the president of the Board of Aldermen shall serve as acting mayor during such disability or absence. If the office of mayor is vacant for any other reason, the president of the Board of Aldermen shall fill the vacancy until a successor is elected (Section 3.4).

Table 1: Continued

<i>Municipality</i>	<i>Provision</i>
Stamford	In the event of absence from the city or temporary disability of the mayor, the president of the Board of Representatives, or in the president's absence or disability, such member as the Board of Representatives shall designate, shall exercise the power of the mayor, except that until such absence or disability of the mayor has continued for 30 days, the acting mayor shall not have power to appoint or remove officers or employees. The compensation for the acting mayor shall be determined by the Board of Representatives but shall in no case exceed in proportion the salary of the mayor (Section C3-10-4).
Torrington	The mayor shall, within one month after his or her election, designate one of the councilmen to be acting mayor and may at any time appoint another councilman to be acting mayor. The acting mayor shall have authority to discharge the duties of the mayor whenever the mayor for any reason is unable to do so (Title 3, Section C3-4).
Waterbury	If the mayor shall be prevented from attending to the duties of his office by absence from the city or by illness or by any other cause, the president of the Board of Aldermen of said city and, in his absence or disability, such president pro tempore as the Board of Aldermen may elect, shall act as mayor until the mayor or president of the Board, as the case may be, shall be able to assume the duties of the office. Such acting mayor shall have all the rights, powers and duties of the mayor except that for a period of 30 days from the date when such acting mayor shall assume the performance of the duties of Mayor, he shall not have or exercise any power of appointment or removal. If an acting mayor shall perform the duties of mayor for seven consecutive calendar days, such acting mayor shall be compensated from the first day of such duty at the rate of 50% of the mayor's salary prorated for such period (Section 4-6).

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