

Background

While citizens have multiple avenues to remove an elected official for cause, our charter and general laws of the state do not adequately address a city elected official's temporary or permanent inability to discharge the powers and duties of office. This silence would, in the unfortunate event of temporary or permanent inability, create uncertainty and confusion for the city. To remedy this problem, staff suggests more directly addressing in the charter the temporary and permanent inability of all city officeholders.

Issue Overview

The Columbus City Charter and general laws of the state provide clear methods for the removal of elected officials from office, as follows:

- Misconduct in office – removal by petition (ORC 3.07-.10)
- Removal of mayor by complaint of governor (ORC 3.08)
- Suspension when charged with felony relating to official conduct (ORC 3.16)¹
- Recall (ORC 705.92, Columbus City Charter Secs. 215 – 223)

General laws of the state and the charters of Ohio's largest municipalities do not truly address a city elected official's temporary or permanent inability to discharge the powers and duties of office – though some minor steps are provided for the mayor.² Columbus' charter is equally silent – and its provisions for the mayor are equally garbled.

Section 64 of the Columbus City Charter states, in relevant part, "If the mayor ... becomes permanently disabled from performing the duties of office..., the mayor shall be succeeded in office, until the 1st day of January following the next regular municipal election, by the president of the council... During a period of temporary disability of the mayor the powers and duties of the office of mayor shall devolve upon the acting mayor."

Neither this section, nor any other part of the charter, defines what constitutes temporary or permanent disability for the mayor, nor does it provide a mechanism for invoking these charter sections. The lack of guidance in general law further complicates this situation.

Arguably, these sections have remained underdeveloped simply because of the lack of a "worst case scenario." It is an unfortunate fact that many common-sense provisions begin as a reaction to circumstances, rather than a product of careful planning and clear directions.

¹ While not technically removal from office, suspension would disallow the discharge of the duties of office until the end of the term, or conclusion of legal proceedings.

² Sec. 7 of the charter provides that absence from eight consecutive council meetings "shall operate to vacate the office" unless the absence is excused by resolution of council. This arguably provides a stop-gap in the event of an "unexcused absence," but serves primarily as a means to assure the regular attendance of council members.

How, though, does the charter's silence on temporary and permanent inability of an officeholder play out in the real world?

Imagine, for example, a city official disappears three months after his/her election, leaving the second-in-command with no means of contact. Days turn into weeks, weeks into months. The second-in-command carries out the basic duties of the office – even though he/she was never elected or appointed to a vacant office, and may very well lack the qualifications required to hold the office. Under the current charter, there would be no clear process to vacate the office and allow the appointment of a successor.

Fortunately, the US Constitution provides some possible guidance on this issue. The 25th Amendment addresses both the temporary and permanent inability of the president to discharge the powers and duties of office. It establishes clear mechanisms to trigger and rescind temporary inability, and to establish permanent inability. The declaration of inability may only originate within the executive branch and is not limited to commonly referenced disabilities, such as a medical emergency. Rescinding the declaration of inability may only originate in the same. While both the charge and decision regarding permanent inability must begin with the executive branch, only another branch of government – in this instance, congress – may vacate the office. Lastly, a clear line of acting authority exists, as well as a successor in the event of permanent inability.

Based in part on the provisions of the US Constitution, the following elements may best serve Columbus' residents in the event of temporary inability of a city officeholder:

1. Define temporary inability as being unable to discharge the powers and duties of office, such inability being of temporary duration.
2. Require a signed declaration that establishes the reason for temporary inability.
3. Allow either the elected or his/her agent to transmit the declaration.
4. Retain the safeguard in Sec. 64 – failure to transmit the declaration “...shall not prevent the proper officer from performing the powers and duties of the office...”
5. Provide that the declaration be in effect until rescinded or the office is vacated.

Based in part on the provisions of the US Constitution, the following elements may best serve Columbus' residents in the event of permanent inability of a city officeholder:

1. Trigger the “permanent inability” provision if both of the following are true: the officeholder has been unable to discharge the powers and duties of office for forty-five consecutive days and no written declaration of temporary inability has been transmitted.
2. Require the acting official, or, in the case of council, the presiding officer, to request an appropriate official to file an action in *quo warranto* to vacate the office.
3. If the appropriate court rules that the office is vacant, name the successor as otherwise provided for in the charter.

While the charter currently addresses the question of successors for each elected official, only the mayor has specific reference to an acting official. Section 86 of the charter does establish a deputy city auditor, who may serve as acting auditor in the event of temporary inability. The charter does not create a similar deputy for the city attorney. The charter rightly declines to offer a “deputy” or “acting council member” for the council, as it is a legislative, rather than administrative office.

Conclusion

Based on the foregoing, staff suggest that this Commission recommend a charter amendment that establishes a uniform process to declare temporary inability, adjudicate permanent inability, and assure clear lines of acting authority and of successors for each elected official of the city.