Coates' Canons Blog: Voting by the mayor pro-tem

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The mayor is on vacation and therefore the mayor pro tem is presiding at the regular council meeting. The city is one in which the mayor votes only to break ties. When a vote comes up, does the pro tem vote as if he or she is still a council member, or does he or she now vote only to break ties? And if the pro tem does vote as a council member, and the result is a tie vote, can the pro tem now vote as mayor to break the tie?

The answers almost certainly are (1) that the pro tem continues to vote as a council member and (2) that the pro tem cannot break a tie he or she helped to create, but the statutes are not quite as explicit as we might like. G.S. 160A-70 provides that a "councilman serving as mayor pro tempore shall be entitled to vote on all matters." Although some might argue that this sentence does not apply when the pro tem is acting in the stead of the mayor but only to the usual situation in which the mayor is presiding, that seems to misunderstand the purpose of the sentence. There is no reason to think that the pro tem can't vote when the mayor is present; the issue only arises when the pro tem is presiding, and therefore we should assume that the sentence is intended to clarify that situation.

But what if the pro tem is presiding and there is a tie? The issue arises because 90 years ago the state supreme court held that a presiding officer could both help create and then break a tie. The case is *State ex rel. Markham v. Simpson*, 175 N.C. 135 (1918). The Elizabeth City board of aldermen was charged with electing a mayor and they split 4-4. At that point their presiding officer (termed chairman in their charter), who had already voted for one of the candidates, voted to break the tie by voting a second time for his candidate. The state supreme court upheld the vote and the election of the mayor.

It is this case that led to the language in G.S. 160A-69, specifying that a mayor who has been elected by the council "shall have the right to vote as a council member on all matters before the council, but shall have no right to break a tie vote in which he participated."

It seems to me that by specifying that a mayor who votes on all issues is barred from breaking a tie vote in which he or she participated, the General Assembly has changed the state's policy from that enunciated in *Markham*. If a mayor who has already voted may not break the resulting tie, then neither may a mayor pro tem. It would have been nice, though, for the General Assembly to specifically have said so.

David Lawrence is retired from the faculty of the School of Government. For questions about the subject of this blog post, please refer to our **list of faculty expertise** to identify the appropriate faculty member to contact.

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