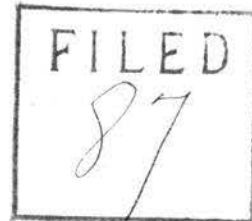


Qualifications and Residence of Councilmen in Cities  
of the 3rd Class. ✓

September 22, 1933

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Mr. George A. Spencer,  
Guitar Building,  
Columbia, Missouri

Dear Sir:

This department acknowledges your letter as follows:

"Mayor Pollard of this city has asked me to write you for an opinion relative to the status of a councilman who has moved from the ward in which he was elected to another ward.

The particular situation is that one of our councilmen, who owns property in the third ward, has left the house furnished for use of his son and he has moved to the fourth ward and rented an apartment. May this councilman continue to serve out the remainder of his term without living in the ward in which he was elected?

If you will give this opinion, we will appreciate it very much."

Section 6736 R. S. 1929, reads:

"No person shall be a councilman unless he be at least twenty-five years of age, a citizen of the United States and an inhabitant of the city for one year next proceeding his election, and a resident of the ward from which he is elected six months next proceeding his election, etc."

In the case of State Ex Rel v. Donworth, 127 Mo.

App. 1. c. 381, the St. Louis Court of Appeals had the

following to say:

"It is true that the aldermen act for the welfare of the city generally and pass ordinances which relate to the entire city; but it is also true that they represent in an especial manner their particular wards. It is well known that in the disbursement of city funds for lighting, fire protection, water, street improvements and many other matters, rivalries and disputes often arise between the sections of a city, and it is important that a particular section be represented in the municipal assembly by its own residents. It is for this reason, we think, that the Legislature provided for representation by residents of the wards and election by their qualified voters."

In State Ex Rel Brown v. McMillan, 108 Mo. 1. c. 160:

"Nor are we impressed with the reasons that relator seems to think actuated the legislature in refusing representation to the new wards till a general election. Taxation without representation has never been resisted in the United States. When we consider that according to the allegations of the relator's petition a new territory as large as the old city had been added to the city and that the city council might project public works that would entail burdensome taxation on this new territory, if they had no voice in the city government, we can see no sound reason why the property-owners in those new wards should be denied representation in the council. Certainly, in the absence of a very clearly expressed intention to the contrary, we will not give such a construction to the charter. We think on this point the law is with respondents."

Referring again to the Donworth case, Supra, the court further said:

"Several incongruities arise if we accept the reasoning of defendant's counsel. If a person elected alderman is a resident of the ward on the day of the election, but immediately moves into another ward, he could serve his two year's term. And if all the aldermen of a city should happen to move into one ward during their respective terms of office, they would still constitute the board

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of aldermen. Such contingencies are opposed to the policy of the statute, which policy is to require aldermen to be residents of the ward not only when elected but during their terms of office."

While it is true the above construction relating to cities of the 4th class was what is now section 6964, yet when the two sections are compared it will readily appear that they are practically of the same verbiage.

This department therefore holds, in view of the language of section 6736 and by what the courts have said, that a councilman not only must be a resident of the ward when elected but must remain such during his term of office. If he moves out of his ward he may be ousted from such office.

Yours very truly,

W. W. Barnes

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Assistant Attorney General.

APPROVED

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Attorney General.