

POLICE OFFICER - Special motorcycle police in Carterville

September 15, 1933



Mr. A. W. Wolfenbarger,
Webb City, Missouri

Dear Sir:

This department acknowledges your letter as follows:

"I am writing you for an opinion relative to the legality of the office of Special Motorcycle Police Officer in the city of Carterville, Carterville, Missouri.

Here are the facts. The mayor appointed two members of the council, himself the chairman, as the special police committee. This committee forthwith employed one John Gabriel as Special Motor-cycle Policeman, subject to the approval of the council at the next regular meeting.

They didn't employ him on a fixed salary. They agreed to fixed fine of \$5.75, the police judge receiving \$2.50, the policeman receiving \$2.50 and the city the remainder, 75¢.

At the first regular meeting, myself and one other man who conducts a small business here, in behalf of the business men of the town offered, what we thought some worthwhile objections to the appointment in this manner, of this man as a special police officer. One member moved to table the appointment and was seconded and the motion carried.

At the next regular meeting we presented a petition signed by all business men but three, requesting the council to remove this officer. The petition was read by the secretary. One of the members moved to table the petition for

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further consideration. It carried. The next week, in secret session, called by the mayor, this man was appointed.

We have a business here that depends largely on tourist traffic. With this man confining his arrests largely to people from other states we are certain to loose a portion of this business.

This is a town of about 1200 people and we don't see the need of an officer of this type. If there is any way of getting him removed we would like to know just what course to pursue. I believe I am safe in saying that 90% of the people here are opposed to having this office. It is quite evident that he has been employed in order that he can pay some outstanding bills.

It is the opinion of most of the representative citizens of Carterville and Webb City that this job was created not as a safety measure but as legal graft. An early reply will be appreciated."

Section 6960, Revised Statutes of Missouri, 1933 provide as follows:

"The mayor, with the consent and approval of the majority of the members of the board of aldermen, shall have power to appoint a treasurer, city attorney, city assessor, street commissioner and night watchman, and such other officers as he may be authorized by ordinance to appoint, and if deemed for the best interests of the city, the mayor and board of aldermen may, by ordinance, employ special counsel to represent the city, either in a case of a vacancy in the office of city attorney or to assist the city attorney, and pay reasonable compensation therefor, and the person elected marshal may be appointed to and hold the office of street commissioner."

Section 7016, Revised Statutes of Missouri, 1933, provide the style of ordinances, how passed and how revived.

In the case of Dearmont v. Mound City, 278 S. W. 802, the Kansas City Court of Appeals said:

"It is claimed that a motion or resolution was adopted on June 7, 1920, by the board of alder-

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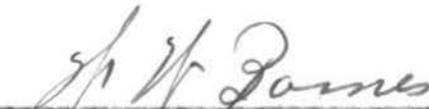
men of defendant city employing Mr. O'Fallon to assist the city in defending the injunction suit. No ordinance was passed employing Mr. O'Fallon and City clerk failed to record the resolution, if there was one adopted by the board of aldermen, so on February 4, 1921, the board passed a resolution ordering the City clerk to amend his minutes to show such employment, which was accordingly done. O'Fallon assisted in the defense of the injunction suit and the evidence shows his services were of the reasonable value of \$1,000. No ordinance was passed employing Mr. O'Fallon or anyone else to assist the city in the matter of the injunction suit and his employment could not have been effected through a resolution. 19 R. C. L. page 895, 28 Cyc. 379 and Sections 8415 and 8467 R. S. 1919." (Now 6960 and 7016).

And in the same case they further said:

There was more than a mere defective exercise of the power by the city, as the power to employ special counsel under the circumstances could only be exercised by the mayor and board of aldermen enacting an ordinance on the subject. Instead of there being a defective or irregular exercise of power there was no exercise of the power."

I have interpreted your letter to the effect that no ordinance appointing the Special Police officer was passed by the board of aldermen. If this is true then we rule that said Special Police officer is not in fact an officer of the city of Carterville.

Yours very truly,



Assistant Attorney General.

APPROVED

Attorney General.