

CITIES OF THIRD CLASS: Officers failing to comply with Sec. 6738, R.S. Mo. 1929 subject to an action in nature of mandamus.

3-26

March 22, 1934.



Senator Frank P. Briggs,
Macon, Missouri.

Dear Senator:

This department acknowledges receipt of your letter of February 10, 1934 in which you inquire as follows:

"What is the penalty for violation of Section 6738, R.S. Mo. 1929?"

Section 6738, R.S. Mo. 1929 concerning which you inquire, is as follows:

"The council shall semi-annually, in January and July of each year, publish a full and detailed statement of the receipts and expenditures and indebtedness of the city for the half year ending on December 31 and June 30 preceding the date of such report, which statement shall be published in some newspaper published in the city."

We are unable to find any statute setting forth the punishment of officers for violation of this section or for refusing to comply therewith; we, however, mention Sec. 6744, R.S. Mo. 1929, which provides:

"Every officer of the city and his assistants, and every councilman, before entering upon the duties of his office, shall take and subscribe to an oath or affirmation before some court of record in the county, or justice of the peace in the township, or the city clerk or police judge, that he possesses all the qualifications prescribed for his office by law; that he will support the Constitution of the United States, and of the state of Missouri, the provisions of all laws of this state affecting cities of this class, and the ordinances of the city,

and faithfully demean himself in office; which official oath or affirmation shall be filed with the city clerk. Every officer of the corporation, when required by law or ordinance, shall, within fifteen days after his election or appointment, and before entering upon the discharge of the duties of his office, give bond to the city in such sum and with such sureties as shall be designated by ordinance, conditioned for the faithful performance of his duty, and that he will pay over all moneys belonging to the city, as provided by law, that may come into his hands. If any person elected or appointed to any office shall fail to take and subscribe such oath or affirmation, or to give bond as herein required, his office shall be deemed vacant. For any breach of condition of any such bond, suit may be instituted thereon by the city, or by any person in the name of the city for the use of such person."

You will note in the above statute this sentence: "that he will support the Constitution of the United States and of the State of Missouri, the provisions of all laws of this state affecting cities of this class, and the ordinances of the city, and faithfully demean himself in office."

From the above section we are of the opinion that if the officers of the city fail to comply with Sec. 6738, supra, it constitutes a violation of their oath of office; however, we do not believe they would be subject to any action of a criminal nature, but that an action in the nature of a mandamus to compel them to carry out the terms of Sec. 6738, supra, might lie.

Respectfully submitted,

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APPROVED:

ROY McKITTRICK,
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