

OFFICERS: Cities of the Fourth Class shall elect and qualify for Mayor and Aldermen in the following manner:

4-20  
April 17, 1934.



Honorable Leo A. Politte  
Prosecuting Attorney  
Franklin County  
Union, Missouri

Dear Sir:

We hereby acknowledge your letters of April 10, 1934, requesting an opinion of this office. Your first letter reads as follows:

"I respectfully request an opinion on the following proposition.

"In the recent city election in Pacific, in Franklin County, Missouri, a mayor and two aldermen were elected by a large majority in said town. Each one of these parties were denied a seat in their particular office, because they were delinquent in the payment of city taxes.

"The man elected mayor was delinquent, at the time of the election, but paid his taxes before the day he was to be seated.

"The aldermen have not, as yet, paid their delinquent taxes. All of the taxes that one of the alderman owes, at this time, is merchant's license.

"They have been denied the right to hold office under Section 6969, Revised Statutes of Missouri, 1929, and said City of Pacific is a fourth class city.

"Please let me have the benefit of your opinion as to whether or not any of these parties are, at this time, eligible to hold office, and, if they should be eligible, in case their taxes should immediately be paid."

Your second letter reads as follows:

"In connection with my letter of even date inquiring an opinion as to the qualification of certain individuals who received majority vote for offices in the City of Pacific, I would like to submit a second question, namely, if these officers are not qualified, will the present officers hold over until another election date, or is the mayor required to call a special election for the purpose of filling these offices.

"In other words, if the officers receiving a majority vote are not qualified to hold office, will the person receiving the next highest vote be considered elected, or will the present officers hold over until the next city election, or will a special election have to be called to fill these offices."

Section 5, Article XIV, of the Constitution of Missouri provides as follows:

"In the absence of any contrary provision, all officers now or hereafter elected or appointed, subject to the right of resignation, shall hold office during their official terms, and until their successors shall be duly elected or appointed and qualified."

You state that the City of Pacific is a city of the Fourth Class, and Section 6951, R. S. No. 1929, relating to elective officers in cities of the Fourth Class provides:

"The following officers shall be elected by the qualified voters of the city, and shall hold office for the term of two years and until their successors are elected and qualified, to-wit: Mayor, marshal, collector and

board of aldermen, and the board of aldermen may provide by ordinance that the same person may be elected marshall and collector, at the same election, and hold both offices and the board of aldermen may provide by ordinance for the election of city assessor, city attorney, city clerk and street commissioner, who shall hold their respective offices for a term of two years and until their successor shall be elected or appointed and qualified."

Section 6952, R. S. No. 1929, provides:

"No person shall be mayor unless he be at least twenty-five years of age, a citizen of the United States and a resident of the city at the time of and for at least one year next preceding his election. When two or more persons shall have an equal number of votes for the office of mayor, the matter shall be determined by the board of aldermen."

Thus we see that in cities of the Fourth Class the Mayor is elected for <sup>two</sup> one year and none of the prerequisite specific qualifications refer to delinquent taxes due from him to the city. The elected mayor is to hold office until his successor is elected and qualified.

Section 6963, R. S. No. 1929, provides:

"The board of aldermen shall, by ordinance, divide the city into not less than two wards, and two aldermen shall be elected from each ward by the qualified voters thereof, at the first election for aldermen in cities adopting the provisions of this article. At such election for aldermen, the person receiving the highest number of votes in each ward shall hold his office for two years, and the person receiving the next highest number of votes shall hold

his office for one year; but thereafter each ward shall elect annually one alderman, who shall hold his office for two years."

Section 6964, R. S. Mo., 1929, provides:

"No person shall be an alderman unless he be at least twenty-one years of age, a citizen of the United States, and an inhabitant and resident of the city for one year next preceding his election, and a resident of the ward from which he is elected. Whenever there shall be a tie in the election of aldermen, the matter shall be determined by the board of aldermen; so, also, in case the election of an alderman be contested."

Thus we see that in cities of the Fourth Class the aldermen are elected for two years and none of the prerequisite specific qualifications refer to delinquent taxes due from him to the city.

Under 6969, R. S. Mo., 1929, providing the prerequisite qualifications for holding an office in a city of the Fourth Class, provides in part as follows:

"\* \* \* No person shall be elected or appointed to any office who shall at the time be in arrears for any unpaid city taxes, or forfeiture or defalcation in office, or who is not a resident of the city."

Thus we see that neither the elected mayor nor the aldermen at Pacific, Missouri, who are delinquent in any city tax, including city merchant's tax, can legally take the prescribed oath as long as his tax remains delinquent.

If any elected officer has illegally taken his oath of office, that is, taken the oath of office while delinquent in his city tax, his oath has availed him nothing for under the constitution and statutes written pursuant thereto, the prior officer holds over until his successor has been duly elected and qualified. In other words the elected officer is in no position to qualify for the office until his city tax is paid, the payment of which is a condition precedent to his right to take the oath of office.

Section 6970, R. S. Mo., provides as follows:

"Every officer of the city and his assistants, and every alderman, 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, 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 while 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 appointment or election, 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 may be designated by ordinance, conditioned upon 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 to the use of such person."

Section 7, Article XIV, of the Missouri Constitution provides:

"The General Assembly shall, in addition to other penalties provide for the removal from office of county, city, town and township officers, on conviction of willful, corrupt or fraudulent



April 17, 1934.

violation or neglect of official duty. Laws may be enacted to provide for the removal from office, for cause, of all public officers, not otherwise provided for in this Constitution."

Section 6957, R. S. Mo., 1929, provides as follows:

"The mayor may, with the consent of a majority of all the members elected to the board of aldermen, remove from office, for cause shown, any elective officer of the city, such officer being first given opportunity, together with his witnesses, to be heard before the board of aldermen sitting as a board of impeachment. Any elective officer, including the mayor, may in like manner, for cause shown, be removed from office by a two-thirds vote of all the members elected to the board of aldermen, independently of the mayor's approval or recommendation. The mayor may, with the consent of a majority of all the members elected to the board of aldermen, remove from office any appointive officer of the city at will, and any such appointive officer may be so removed by a two-thirds vote of all the members elected to the board of aldermen, independently of the mayor's approval or recommendation. The board of aldermen may pass ordinances regulating the manner of impeachments and removals."

Thus we see that pursuant to the Constitution, the Legislature did pass a law making it possible for the mayor and board of aldermen, sitting as board of impeachment to remove from office, for cause shown, any elective officer. The method provided in this section is exclusive, in removing officers in cities of the Fourth Class who have qualified and been sworn in office and afterwards made themselves subject to impeachment.

#### CONCLUSION.

From the facts presented in your letter it is our opinion that the problem at Pacific, Missouri, is not a

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-7-

April 17, 1934.

problem of impeachment of city officers leaving their office vacant and necessitating a special election to fill their office. It is our opinion that the old officers hold over until such a time as their successors have qualified and are sworn in, and should they never qualify, by paying their delinquent tax, and take the oath, then the old officers hold over until the next general city election. We fail to find any provision in the Statutes allowing those persons receiving the next highest vote to qualify as officers in cities of the Fourth Class, as suggested in your letter.

Respectfully submitted

WM. ORR SAWYERS  
Assistant Attorney General.

APPROVED:

ROY McKITTRICK  
Attorney General.

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