

CITIES - City of fourth class may, by ordinance, provide for the appointment of a collector of light and water revenue.

March 28, 1936. 4-1



Honorable George B. Barnett  
Collector of Light and Water Revenue  
Lebanon, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads as follows:

"In explanation: In October, 1934, the elected City Collector, who collected property taxes and light & water revenue, was suspended due to an alleged shortage in accounts which has not been settled to date. According to the understanding, at that time, the office went to the City Treasurer. Due to the fact that the City Treasurer held a good position in a local bank, he declined trying to take care of the collection of light & water revenue, but has collected property taxes. An ordinance was passed at that time making the office of Collector of Light & Water revenue an appointive office by vote of the board of aldermen, or at least that is my understanding of the situation. I received a temporary appointment at that time, pending the outcome of the difficulties of the suspended collector.

"No, a city election is coming in a few days and the question is raised that the person elected Collector will, by virtue of law, take over the collection of light & water revenue along with collection of property taxes. IF THIS IS THE LAW, it

would be to my advantage to announce for Collector and try to secure the office by the vote of the people. If this isn't true, it would be absurd for me to make any race, due to the fact the salary paid for collector of property taxes, on a commission basis is smaller than the set salary of Collector of Light & Water Revenue. In my opinion, the majority of board of aldermen would rather the offices stay as they have been under my temporary appointment. But, at least one alderman, and perhaps some other citizens are determined that the elected Collector shall also collect light & water revenue.

"This town is incorporated under laws of a 4th class town, although having a population for a 3rd class town, and the light & water plant is a municipal plant."

We point to the general law respecting what cities of the fourth class may do towards enacting ordinances that are not inconsistent with the provisions of the laws of this State. Your attention is directed to Section 7289, R. S. Mo. 1929 relating to municipalities enacting laws in conformity with the State laws. Said section reads as follows:

"Any municipal corporation in this state, whether under general or special charter, and having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state, unless otherwise prescribed or authorized by some special provision of its charter, shall confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject."

It may be seen from a perusal of the above section of the statute that municipalities must confine their or-

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dinances to and in conformity with the state laws upon the same subject.

Section 6951, R. S. Mo. 1929, relating to the elective officers in cities of the fourth class, provides as follows:

"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 marshal 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."

You will note from the above section that one of the elective officers, under the provisions of this statute, is a collector.

Section 6960, R. S. Mo. 1929, relating to appointive officers, provides in part 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 above section of the statute does not specifically provide for a collector of light and water revenue.

However, from the above quoted part of the section which is underlined, it is evident that other officers may be appointed by the mayor with the consent of a majority of the board of aldermen, if they are authorized by ordinance, and deemed for the best interests of the city.

A further perusal of the statutes indicates, under Section 6974, R. S. Mo. 1929, that the powers and duties of officers in any way connected with the city government may be prescribed by ordinance. A part of said section reads as follows:

"The duties, powers and privileges of officers of every character in any way connected with the city government, not herein defined, shall be prescribed by ordinance."

It may readily be seen from the above section that the powers and duties of any officers connected with the city government having not heretofore been defined by our state laws, may be prescribed by ordinance.

Section 7028, R. S. Mo. 1929, relating to the board of aldermen of cities of the fourth class having the right to erect, maintain and operate electric works, provides in part as follows:

"The board of aldermen shall have the right, also, to erect, maintain and operate gas works, electric light works, or light works of any other kind or name, and to erect lamp posts, electric light poles, or any other apparatus or appliances necessary to light the streets, avenues, alleys or other public places, and to supply private lights for the use of the inhabitants of the city and its suburbs, and to regulate the same, \* \* "

Section 7029, R. S. Mo. 1929, relating to the right of the Board of Aldermen to erect, maintain and operate water works for a city of the fourth class, provides in part as follows:

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"The board of aldermen shall have the right, also, to erect, maintain and operate water-works for the city, and to regulate the same, \* \* "

In construing the above two quoted sections of the statute, we must interpret the word "regulate", as set forth in the statutes, for the purpose of determining your request for an opinion.

In the case of State ex rel. vs. Fields, 218 Mo. App. 155, l.c. 167, the court, in defining the word "regulate", said:

"To 'regulate' means 'to adjust, order, or govern by rule, method, or established mode; direct or manage according to certain standards or laws; subject to rules, restrictions or governing principles.' "

It naturally follows that since a city of the fourth class is given the right to erect, maintain and operate electric light and water works for said city, that such city could, by ordinance, provide for officers to operate said electric light and water works, and in this connection could appoint a collector of the light and water revenue.

The law has not provided any duties for the elective officers and has left it up to the Board of aldermen to enact by ordinance the duties and powers and privileges of any of the city officers under the provisions of Section 6974, supra.

#### CONCLUSION.

In light of the above sections of the statutes, it is our opinion that the board of aldermen in cities of

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the fourth class may appoint a collector of light and water revenue which shall be a separate and distinct office from the city collector who collects the personal and property taxes for the city.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

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(Acting) Attorney General

RCS:FE