

CITIES: No person under the age of twenty-five years may be elected to the council of a ^{CITY} state of a third class.

April 12, 1938

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Dr. M. S. Slaughter,
Mayor-elect,
Webb City, Missouri.

Dear Sir:

Under date of April 9, 1938 Woodson Oldham, an Attorney at Law of your city requested that we furnish you an official opinion upon the following state of facts:

"Dr. M. S. Slaughter, Mayor-elect, of Webb City, Missouri, has requested that I obtain the opinion of the attorney-general's office concerning the right of a young man, less than twenty-five years of age, to serve as a councilman of a city of third class. At the general city election, held on April 5th, a young man about twenty-two years of age was elected to the council from one of the wards of Webb City, and his right to serve as such councilman has been questioned.

The city council passed an ordinance reducing the age of councilmen to twenty-one, and the right of the council so to reduce the age limit of councilmen, has been questioned in the face of Section 6736, R. S. Mo. 1929."

We invite your attention to applicable statutes which govern the question presented by Mr. Oldham's request.

Section 7289 of R. S. Mo. 1929, relating to municipalities enacting ordinances in conformity with the state laws, 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."

In the case of City of Richland vs. Null, 185 S. W. 250-51, the appellate court, in discussing the powers granted to a city, said:

"We would not adhere to the rules insisted upon by the defendant. That plaintiff city can exercise only such powers as are granted in express words or those necessarily incident to, or implied in the powers expressly granted; * * * ."

Obviously Section 7289 limits municipalities to the passage of ordinances regulating subjects, matters and things upon which there is a general law of this state to and in conformity with such general laws. Section 6736 of R. S. Mo. 1929, relating to the qualifications of councilman, reads, in part, as follows:

"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 preceding his election, and a resident of the ward from which he is elected six months next preceding his election."

The above section clearly contemplates that no person shall be a councilman unless such person be at least twenty-five years of age, a citizen of the United States and an inhabitant of the city for one year next preceding

his election. No other construction, in this respect, may be rationally implied from the words used. Consequently no room for construction exists. *Cummings vs. Kansas City Public Service Company*, 66 S. W. 1. c. 931; *State vs. Thatcher*, 92 S. W. (2nd) 1. c. 643.

Section 6744 provides, in part, as follows:

"Every officer of the city * * * and every councilman, before entering upon the duties of his office, shall take and subscribe to an oath * * * that he possesses all the qualifications prescribed for his office by law; * * * ."

From these statutory considerations, it is evident that the young man who is less than twenty-five years of age and who has been elected to the council of a city of a third class, could not serve as a councilman in view of the plain and unequivocal requirements of the statute. It should also be pointed out that such person could not take the required oath that he possesses all the qualifications prescribed for his office by law, since one of the qualifications of a councilman is that such councilman be, at least, twenty-five years of age prior to his election.

It should also be observed that even though the city council has passed an ordinance reducing the age of councilmen to twenty-one years, it is clearly in conflict with Section 6736, supra, which requires that the councilmen be at least twenty-five years of age. These considerations are in accordance with the general fundamental rule of law that a city may only enact ordinances which are in harmony with the general laws of the state. As was said in the case of *Wood vs. Kansas City*, 162 Mo. 303-09:

"The power to enact ordinance by defendant city can only be exercised within the limits of its charter, and in harmony with the constitution and statutes of the state."

This principle of law has had consistent application and has most recently been reaffirmed in the case of *Fishback Brewery Company vs. City of St. Louis*, 87 S. W. (2nd) 648.

Dr. M. S. Slaughter

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CONCLUSION

In view of the above, it is our opinion that no person under the age of twenty-five shall be elected to the council of a city of the third class, even though the city has enacted an ordinance which reduces the age of councilmen to twenty-one years.

Respectfully submitted,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney-General

RCS:LB