

POLICE BILL:  
AMENDMENTS TO:

Lawmakers may not infringe upon the appointive powers of the Governor in enacting legislation.

May 6, 1939



Honorable Arthur S. McDaniel  
Representative  
Dunklin County  
Jefferson City, Missouri

Dear Sir:

This is in reply to yours of recent date wherein you request an opinion from this department on the constitutionality of two proposed amendments to House Bill No. 688 which is now pending before the General Assembly. These amendments are as follows:

"The duly elected City Council of any City affected by this Act shall designate to the Governor, within two (2) weeks after his inauguration, or within two (2) weeks after a vacancy occurs, its choice of political parties and the Governor shall appoint the said Police Commissioners from the political party designated."

"The Governor shall appoint the Commissioners from the political party having the largest number of members on the City Council of any City affected by this act."

The question involved in these proposed amendments is would they be an infringement by the lawmakers upon the appointive powers of the Governor.

Under Section 11 of Article V of the Constitution

the power of appointment of officers is vested in the Governor. Under the police bill as it is proposed the commissioners shall be appointed by the Governor.

This proposed amendment seems to be an attempt on the part of the lawmakers to limit this power of the Governor to a certain extent by providing that the city council of the city affected shall choose the political party from which the commissioners shall be appointed by the Governor.

The second amendment does not attempt to designate any other agency nor to limit the Governor in his constitutional powers of appointment other than stating that the commissioners shall be appointed from the political party having the largest number of members on the council affected by the act.

We think in the case of State ex rel. v. Wright, 251 Mo. 335, that the court has laid down the rule which would be controlling on this question. At l.c. 335 the court said:

"In conferring this power of appointment on the Governor, the Legislature had the power to attach such conditions to it and to require such qualifications in those appointed by the Governor as it saw fit, so long as those conditions were not shared by others with the Governor, or thrown upon others, wholly or in part, for their determination, and so long as the qualifications were not so drastically restrictive of the executive volition as to become for one of these three reasons in conflict with the constitutional provision requiring the separation and the retaining separate of the three co-ordinate branches of government. \* \* \* \* \*

By applying the rule laid down in the Wright case, supra, it seems that the first amendment proposed the

May 6, 1939

city council by designating to the Governor its choice of political parties from which the commissioners shall be selected by the Governor would be sharing in the powers of appointment of the Governor and would, therefore, be in violation of the constitutional provision relating to powers of appointment by the Governor.

The second proposed amendment does not provide that the power of appointment by the Governor shall be shared with any other party or parties. It simply provides that the commissioners shall be selected from the political party having the largest number of members on the city council. We do not think this amendment would infringe upon the powers of the Governor to the extent that it could be said it is unconstitutional.

CONCLUSION.

From the foregoing it is the opinion of this department that the first proposed amendment to House Bill No. 688 would be in violation of the provisions of the Constitution as to the powers of appointment by the Governor and would, therefore, be unconstitutional.

As to the second proposed amendment it is the opinion of this department that it would not be an infringement upon the powers of appointment of the Governor and would, therefore, be constitutional.

Respectfully submitted,

TYRE W. BURTON  
Assistant Attorney General

APPROVED:

---

J. E. TAYLOR  
(Acting) Attorney General

TWE:DA