

CITY OFFICERS  
ASSISTANT CITY MARSHAL:

An assistant city marshal of a third class city is prohibited by law from selling the city in which he is assistant marshal, a motor vehicle because of the fact that he is a city officer.

December 8, 1960



Mr. Charles A. Powell, Jr.  
Prosecuting Attorney  
Macon, Missouri

Dear Sir:

On November 15, 1960, you wrote to this department requesting an official opinion, which opinion request reads:

"I have been requested by a councilman of this city to inquire whether it is illegal for an assistant city marshal to sell the city a used truck.

"His appointment to his job is for a year and his pay is on a yearly basis.

"I indicated my belief that the reason for the rule would not apparently have much application in such case, but that if he is within the definition of officer, in duration of his job and pay period, the prohibition would extend to him.

"I am advised the city attorney indicated the propriety of this transaction, basing his opinion on his determination that the assistant marshal was not an 'officer.'"

Section 77.470 RSMo reads:

"Officer prohibited from being interested in contracts, etc., how punished. -- If any city officer shall be directly or indirectly interested in any contract under the city, or in any work done by the city, or in furnishing supplies for the city, or any of its institutions, he shall be deemed guilty of a misdemeanor, and upon conviction thereof, shall be punished by a fine not exceeding two hundred dollars, or by imprisonment in the county jail not exceeding six months, or by both such fine and imprisonment; and upon the city council, or any member thereof, becoming satisfied

that any officer of the city is so interested, the council shall, as soon as practicable, be convened to hear and determine the same, and, if, upon investigation such officer be found so interested, by a majority of all the members elected to the council, he shall be immediately dismissed from office."

It would appear to be clear that the selling of a motor vehicle to a city would come within the purview of the above section, if the person selling it was a city officer.

Section 77.400 RSMo 1949 reads:

"The term 'officer', whenever used in this chapter shall include any person holding any situation under the city government of any of its departments, with an annual salary, or for a definite term of office.

From the above we see that "officer" is anyone who, among other things, holds a situation under the city government for a definite term of office.

Section 85.551 Laws of 1955, page 290 reads:

"Marshal to be chief of police where department not adopted - assistants and policemen appointed under ordinance -- removal --. 1. In cities of the third class which shall not have adopted the merit system police department provided for in sections 85.541 to 85.571, the marshal shall be the chief of police, and there also may be one assistant marshal, who shall serve for a term of one year and who shall be deputy chief of police; such number of regular policemen as may be deemed necessary by the council for the good government of the city, who shall serve for terms of one year; and such number of special policemen as may be prescribed by ordinance, to serve for such time as may be prescribed by ordinance.

2. The manner of appointing the assistant marshal and all policemen of the city shall be prescribed by ordinance. The council shall also, by ordinance, provide for the removal of any marshal, assistant marshal or policeman guilty of misbehavior in office."

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We have been informed by the City Clerk of your city that Macon does not have the merit system police department. The city is a third class city.

From the above we see that the assistant city marshal does have a definite term of office, which brings him within the purview of Section 77.400, supra, thereby making him a city officer and so within the purview of Section 77.470 supra.

#### CONCLUSION

It is the opinion of this department that an assistant city marshal of a third class city which does not have a merit system police department, is prohibited by law from selling the city in which he is assistant marshal, a motor vehicle, because of the fact he is a city officer.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Yours very truly,

John M. Dalton  
Attorney General

HPW:ms