

MERIT SYSTEM:  
MARSHAL:  
CITIES, TOWNS & VILLAGES:  
POLICE:  
POLICE DEPARTMENTS:

Adoption of merit system police plan by city of third class eliminates office of marshal; chief of police under merit plan, performs duties previously performed by marshal.

December 26, 1961



Honorable Raymond R. Roberts  
Prosecuting Attorney  
St. Francois County  
Farmington, Missouri

Dear Mr. Roberts:

We are in receipt of your request for an opinion of this office which reads as follows:

"This office has been requested to request an opinion concerning the institution of the merit system police plan under Chapter 85 of the Missouri revised statutes, for the city of Bonne Terre, which is a third class city. This is specifically provided for in Section 85.541, enacted in 1955 in the legislature.

At the present time the city of Bonne Terre has an elected City Marshall. It is this office's feeling that the city of Bonne Terre can institute the merit system police plan under Chapter 85, however, there are some specific requests which need to be clarified. These are the following:

1. Does the adoption of the merit system police plan by the city of Bonne Terre, eliminate the office of Marshall?
2. If so, does the Chief of Police perform the Marshall's statutory duties?
3. Assuming that the merit system police plan is put into effect, properly

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under the statutes of Missouri, must there still be an election for the office of Marshall pursuant to Section 77.370, or may the office be eliminated from the ballot entirely?

4. Again, assuming that a legally constituted merit system police department is instituted and it is your decision that the office of Marshall is not eliminated, and there is an election pursuant to Section 77.370, what are the powers and duties of the Marshall?"

Chapter 77, RSMo 1959, contains the statutory provisions governing cities of the third class. Subsection 1 of Section 77.370, RSMo 1959, reads as follows:

"1. Except as hereinafter provided, the following officers shall be elected by the qualified voters of the city: Mayor, police judge, attorney, assessor, collector, treasurer and, except in cities which adopt the merit system police department, a marshal."

Under this section the adoption of a merit system police plan authorized by Section 85.541, RSMo 1959, eliminates the office of marshal in cities of the third class. The first question posed in your request must therefore be answered in the affirmative. In this connection, however, your attention is directed to Section 85.571, RSMo 1959, which provides as follows:

"Persons elected or appointed to office prior to the effective date of sections 85.541 to 85.571 and persons elected or appointed prior to an adoption of a merit system police department therein provided for shall continue in office for the remainder of the term for which they were elected or appointed."

In answer to your second question we direct attention to the provisions of sections 85.541, subsection 1, 85.551, subsection 1, RSMo 1959. Section 85.541, subsection 1, reads as follows:

"1. Any city of the third class may by ordinance adopt a merit system police department. Such police department shall have a chief of police, and may have a deputy chief of police, and such number of regular policemen of such rank or grade as may be prescribed by ordinance."

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Section 85.551, subsection 1, provides as follows:

"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."

These sections provide for a chief of police when a merit police plan has been adopted in cities of the third class and for a marshal in cities of that class to be the chief of police when a merit system has not been adopted.

We, therefore, construe the legislative intent to be that these officers are to perform similar functions. Under these provisions if a merit system is adopted the chief of police will assume all supervisory powers exercised previously by the marshal. The answer to the second question is then in the affirmative.

We believe that the answer to your third question is that there should not be an election for the office of marshal in cities of the third class which have adopted a merit system police plan and that, therefore, the office should be eliminated from the ballot.

Section 77.370, RSMo 1959, it will be noted, expressly provides that a city marshal is to be elected "except in cities which adopt the merit system police department".

Inasmuch as we have previously held in this opinion that the office of marshal in third class cities which adopt the merit system police plan is eliminated, your fourth question need not be answered.

#### CONCLUSION

It is the opinion of this office that the adoption of a merit system police plan under the authority of Section 85.541, RSMo 1959, by a city of the third class eliminates the office of

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marshal, except that the incumbent holds office until the end of the term for which he was elected, therefore there should be no election after the adoption of the plan for that office. It is further our opinion that the chief of police assumes the duties previously performed by the marshal when the city involved was operating without the merit police plan.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Ben Ely, Jr.

Yours very truly,

THOMAS F. EAGLETON  
Attorney General

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