

March 1, 1962



Honorable Norman H. Anderson
Prosecuting Attorney
St. Louis County Courthouse
Clayton, Missouri

Dear Mr. Anderson:

We are in receipt of your letter of February 9, 1962, in which you ask our opinion concerning H.B. 542, 71st General Assembly (now Section 79.050 RSMo Cum. Supp. 1961), which reads 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 and board of aldermen. The board of aldermen may provide by ordinance, after the approval of a majority of the voters voting at an election at which the issue is submitted, for the appointment of a collector and for the appointment of a chief of police, who shall perform all duties required of the marshal by law, and any other police officers found by the board of aldermen to be necessary for the good government of the city. If the board of aldermen does not provide for the appointment of a chief of police and collector as provided by this section, a city marshal and collector shall be elected, 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 successors shall be elected or appointed and qualified."

You have asked whether the provisions of this section entitle fourth class cities to provide for the appointment of either a chief of police or collector or whether it requires that both offices be either elective or appointive.

It is our opinion that the word "and" as underlined above, must be construed as "or" in order to give effect to the intention of the legislature in passing this section. There being no connection between the duties and functions of the two offices there exists no logical reason why those who hold them should be selected in the same manner.

Your attention is directed to the last part of the section which authorizes the Board of Aldermen to "provide by ordinance for the election of city assessor, city attorney, city clerk and street commissioner . . . ". The word "and" is used here obviously in the disjunctive; we believe that this use is analogous to the use in connection with the provisions concerning the chief of police and collector.

We are therefore of the opinion that the provisions of Section 79.050, RSMo Cum. Supp. 1961, regarding the appointment or election of chiefs of police and collectors in cities of the fourth class, must be construed in the disjunctive. The Board of Aldermen of such city may provide that one of these offices be filled by appointment without having to provide that the other be filled in the same manner.

Yours very truly,

THOMAS F. EAGLETON
Attorney General

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