

February 2, 1965



Honorable Alfred A. Speer
Representative, 12th District
St. Louis County
Room 201, Capitol Building
Jefferson City, Missouri

Dear Representative Speer:

You have requested an official opinion of this office upon a question forwarded to you by the City of Glendale which has been expressed as follows:

"If a fourth-class city (which of course is Glendale) adopts a pension plan for the police and firemen under provisions of Section 86.580, and following Missouri Revised Statutes, and then later consolidates with another fourth-class city under the provisions of Section 72.150, and following Revised Statutes of Missouri, would it be necessary for the consolidated municipality to re-submit the pension plan to the voters, or would the pension plan carry over for all of the police and fire employees of the new city without further vote."

Section 86.583, RSMo. 1959, provides:

"Any municipality in any county of the first class, and any other municipality in this state which now contains or may hereafter contain not more than one hundred thousand inhabitants nor less than three thousand inhabitants as determined by the last preceding federal census is hereby authorized to provide for the pensioning of the salaried members of its organized police force or fire department and the widows and minor children of deceased members; provided, however,

that nothing in this section shall be construed to affect any pension or retirement system for members of an organized police force or fire department, and their widows or minor children, which has been established previously under authority of an act of the general assembly and which is in operation at the time of the passage of this section, and the provisions of law applicable to any such pension or retirement system shall not be deemed to be repealed or superseded by the provisions of this section. This section shall not take effect in any such city until approved by the voters thereof as herein provided. On order of the city council, or on petition of five per cent of the qualified voters of said city, the city clerk shall publish notice thereof and submit to the qualified electors of said city at the next general or municipal election the question: 'Shall the police or firemen's pension plan be approved?' If a majority of the voters casting votes thereon at the election is in favor of the question, this section shall take effect in said city thirty days after the election. Notice of every such election under this section shall be published at least once a week for at least three weeks in a newspaper of general circulation in said city the last publication to be not more than three nor less than two weeks next preceding the election."

Under this section, a city in a county of the first class, such as Glendale, and other cities mentioned in the act, may adopt a pension plan for policemen and firemen by a majority vote at an election held for the purpose of approving or disapproving such plan. We think that a pension plan pursuant to this section would necessarily be in the form of an ordinance.

Sections 72.150 through 72.205, RSMo. Cum. Supp. 1963, govern the consolidation of municipalities of the class that includes Glendale. Consolidation of two or more such municipalities may be initiated by a consolidation ordinance adopted by each of the municipalities to be consolidated or by a petition for consolidation. Sections 72.155 and 72.163 provide that a consolidation ordinance or a petition for consolidation may contain, among other enumerated matters:

"* * * the details of transition, such as which officers will serve, which employees shall be retained, what taxes will be collected, what ordinances will be in effect and similar matters for the operation of the consolidated municipality until the new governing body provides otherwise * * *."
(Emphasis ours)

The sections state that such details of transition may be included in the ordinances or petition but are not required.

If a municipality adopts a pension plan pursuant to Section 86.583 supra and subsequently consolidates with another municipality pursuant to Section 72.150 et seq. supra, and there is included in the consolidation ordinances or petition for consolidation, a provision that the pension plan shall remain in effect, it is our opinion that such provision in the ordinances or petition would be valid and if the consolidation were effected according to the terms of the statutes governing consolidation pursuant to such ordinances or petition, then the new municipality formed by the consolidation would be covered by the pension plan, without further vote. The pension plan would fall within the classification described in the words of Sections 72.155 and 72.163, "what ordinances will be in effect," above quoted.

On the other hand, if the consolidation ordinances or the petition for consolidation did not contain a provision continuing the pension plan in effect, there is another method whereby the plan could be adopted in connection with consolidation.

Section 72.185 reads:

"In the event that the proposition as voted upon does not contain the name and form of government of the proposed consolidated municipality and the details of transition, such as which officers will serve, ~~which~~ employees shall be retained, what taxes will be collected, what ordinances will be in effect and similar matters for the operation of the consolidated municipality until the new governing body provides otherwise, then the governing body of each affected municipality shall select five commissioners to meet with similar commissioners appointed from the other affected municipalities, the commissioners to study

and recommend an appropriate name and form of government of the consolidated municipality and the details of the transition. The commissioners shall recommend the name and form of government of the consolidated municipality and the details of the transition, which shall be voted upon in separate elections in each of the affected municipalities, and, if the proposition fails to pass by a simple majority in both or all of the same affected municipalities, a new charter commission shall be appointed which shall submit a second recommendation to the voters for election. If the second recommendation as to name and form of government and the details of the transition shall also fail to pass by a simple majority, the results of the two elections shall be compared and the proposition receiving the highest total number of votes in favor thereof shall be considered as having passed by a simple majority." (Emphasis ours.)

Under this section the pension plan would be in effect upon consolidation if the recommendation of a charter commission is adopted by the voters pursuant to Section 72.185 containing a provision that the ordinance providing for such plan would remain in effect.

If neither the consolidation ordinances, the petition for consolidation nor the commissioners' recommendation contain any provision for the continuation of the pension plan, the ordinance embodying the plan is no longer in force once consolidation is effected. In this situation, a new plan could be adopted by the new municipality pursuant to Section 86.583, RSMo 1959.

It is the opinion of this department that a pension plan for policemen and firemen adopted by a municipality pursuant to Section 86.583, RSMo 1959, may be continued in effect upon the consolidation of such municipality with another municipality by providing in the consolidation ordinances, petition for consolidation or commissioners' recommendation that the ordinance embodying such plan shall be continued in effect, and that otherwise, that ordinance embodying such plan would no longer be in effect upon consolidation.

Yours very truly,

NORMAN H. ANDERSON
Attorney General