Opinion No. 262
Answered by Letter -- Ashby

September 28, 1965

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Honorable Alfred A. Speer
Representative, 12th District
St. Louis County
101 South Meramec
Clayton 5, Missouri

Dear Representative Speer:

This letter is in response to your question arising from the proposed consolidation of the City of Glendale and Oakland. You submitted the following facts and question set out below in a statement to a member of this office:

> Two Fourth Class cities in St. Louis County Glendale and Oakland, are contemplating initiating a merger to become one Fourth Class city by means of an ordinance prepared by their respective city councils and submitted to the voters of each city pursuant to Chapter 72, V.A.M.S. Present plans provide for Oakland, which now has 3 wards, to become one ward of the consolidated city. The question is whether under this arrangement all of the present officers of both cities could be retained on an interim basis until elections are held in the consolidated city next spring.

The consolidation of cities is governed by Chapter 72, R.S.Mo. Section 72.155, R.S.Mo. Supp. 1963 with which we are concerned provides as follows:

> "1. Consolidation of municipalities may be instituted by the governing bodies of any cities, towns or villages, or any combination thereof, by ordinance, adopted by the governing bodies of the respective municipalities. The ordinance shall contain the following:
>
> "(1) The names of the municipalities to be consolidated;

"(2) The proposed effective date of consolidation;
"(3) The number of votes cast in the last municipal election.

"2. The ordinance may contain the name of the municipality as consolidated, the form of government to be adopted 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 municipalty until the new governing body provides otherwise.

"3. The adopted ordinance shall then be filed with the county court in the same manner as provided for initiative petitions in Section 72.167."

(Emphasis ours.)

Chapter 79, R.S.Mo., is that portion of the statutes that deals with the organization of Fourth Class cities. The pertinent statutes are set forth hereafter. Section 79.050, R.S.Mo. Supp., 1963, provides 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 colector, 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."

Section 79.060, R.S.Mo., provides in part for the Board of Aldermen and is as follows:

> "The board of aldermen shall, by ordinance, divide the city into not less than two wards, and two aldermen shall be elected from each ward by the qualified voters thereof, * * * * *."

Section 79.230, R.S.Mo., provides for the following officers:

> "The mayor, with the consent and approval of the majority of the members of the board of aldermen, shall have power to appoint a treasurer, city attorney, city assessor, street commissioner and night watchman, and such other officers as he may be authorized by ordinance to appoint, and if deemed for the best interests of the city, the mayor and board of aldermen may, by ordinance, employ special counsel to represent the city, either in a case of a vacancy in the office of city attorney or to assist the city attorney, and pay reasonable compensation therefor, and the person elected marshal may be appointed to and hold the office of street commissioner."

The best guide to construing statutes is to first seek the lawmakers intention for the whole act and, if possible, to effectuate that act (Kirkwood Drug Company vs. City of Kirkwood 387 SW 2d 550) Statutes, in para materia, should be construed together and harmonized insofar as it is reasonably possible (Garrad v. St. Department of Public Health and Welfare 375 SW 2d 582).

It is our view that Chapter 72 on consolidation of cities should be construed so that when consolidation has been effected that the newly consolidated city shall have only those officers specified by statutes.

This opinion assumes that the respective cities involved will comply fully with Section 72.155 V.A.M.S., et. seq. That is to say, that the cities will provide for "which officers will serve", etc. The ordinance (providing for consolidation under the statutes) should provide, among others, for the selection of a mayor, two aldermen from each ward, etc., (Section 79.050, 79.060 V.A.M.S.). Therefore, it is the conclusion of this office that only one mayor and two aldermen from each

ward can be provided by the ordinance providing for consolidation. Specifically, on the facts stated above, Oakland (which will become one ward in the newly consolidated city) can only have two aldermen. Your question as stated above must be answered in the negative.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

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