

THIRD CLASS CITY:  
CITIES, TOWNS, VILLAGES:  
CITY COUNSELOR:  
"MINISTERIAL":

The City Counselor of a third class city is required to be a resident of said city.

OPINION NO. 132  
NO. 469 (1967)

February 27, 1968



Honorable Stanley Braton  
Prosecuting Attorney  
Johnson County  
Warrensburg, Missouri 64093

Dear Mr. Braton:

In your request for an opinion you state the problem as follows:

"May a city of the third-class, which has, under Section 98.340 V.A.M.S., established the office of City Counsellor, and set forth the duties of such City Counsellor by ordinance as follows:

'The City Counsellor shall represent the City in all cases in all Courts of record in this State; shall draft and approve all ordinances, contracts and legal forms of every kind, and perform such duties as shall be prescribed by ordinance or shall be ordered by the Council or mayor. ---The City Counsellor shall be Ex-officio City Attorney in case of the absence, disqualification, disability or resignation of the elected City Attorney.'

appoint, hire, retain and employ to the appointive office of City Counsellor, an attorney who is not a resident of or voter in said third-class city, said appointment having been made by the City Council of such city under purported authority of Senate Bill 39, now Section 77.380 V.A.M.S., as an appointment to an office having only 'ministerial' duties? The city involved has no elected City Attorney, the previous elected City Attorney having resigned and no election held to select a replacement."

Honorable Stanley Braton

Section 77.380, RSMo 1959, formerly required that:

"All officers elected or appointed to offices under the city government shall be qualified voters under the laws and constitution of this state and the ordinances of the city, and, except the city sextons, must be residents of the city. \* \* \* "

Senate Bill No. 39, 74th General Assembly, repealed Section 77.380, RSMo 1959, and enacted in lieu thereof Section 77.380, RSMo Cum Supp 1967, which reads as follows:

"All officers elected or appointed to offices under the city government shall be qualified voters under the laws and constitution of this state, and except the city sextons, appointed police officers, and other employees having only ministerial duties, must be residents of the city. \* \* \* "  
(Emphasis added)

In order for a non-resident to be elected or appointed to an office within the city government, the office must fall with the exceptions: " \* \* \* city sextons, appointed police officers, and other employees having only ministerial duties, \* \* \* ". The question may thus be confined to whether the City Counselor is an "employee having only ministerial duties".

Black's Law Dictionary, 4th Ed., 1951, defines "ministerial" as:

"That which is done under the authority of a superior; opposed to judicial; that which involves obedience to instructions, but demands no special discretion, judgment or skill."

Black's, supra, defines "ministerial duty" as:

"One regarding which nothing is left to discretion -- a simple and definite duty, imposed by law, and arising under conditions admitted or proved to exist."

In order to determine whether the City Counselor is an "employee having only ministerial duties," we must refer to Section 98.340, RSMo 1959, which prescribes his duties as follows:

"In any suit or action at law or in equity brought by or against the city except in prosecutions begun before the police judge,

Honorable Stanley Braton

the city council may, by resolution, employ an attorney or attorneys, and pay him or them a reasonable fee therefor; provided, that any city may, by ordinance, provide for the office of city counselor and his duties and compensation. Such city counselor, when so provided for, shall represent the city in all cases in all courts of record in this state; shall draft all ordinances and contracts and all legal forms of every kind, and give legal advice to the council and other officers of the city, and perform such other duties as shall be prescribed by ordinance or shall be ordered by the council or the mayor. In any city where there is a city counselor, the duties of the city attorney shall be such as may be prescribed by ordinance." (Emphasis added)

Thus, it can be seen that the duties of the City Counselor involve a large amount of discretion and cannot reasonably be classified as "ministerial". He is a legal advisor to the city council and manages litigation in which the city is a party. Although he is under the supervision of the city council, he possesses the powers of free decision and a wide latitude in discharging his responsibilities of advising city officers and drafting legal instruments. Official action . . . is ministerial when it is absolute, certain and imperative, involving merely the execution of a set task, and when the law which imposes it prescribed and describes the time, manner and occasion of the performance with such certainty that nothing remains for judgment or discretion. McQuillin, Munic, Corp., 3rd Ed. Revised, Section 10.32.

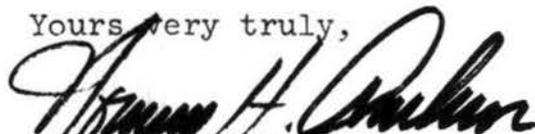
We therefore conclude that a city counselor of a third class city is not an "employee having only ministerial duties" and as a result must be a resident of the city.

#### CONCLUSION

It is the opinion of this office that the City Counselor of a third class city is required to be a resident of said city.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, J. Steve Weber.

Yours very truly,



NORMAN H. ANDERSON  
Attorney General