

March 6, 1970

LETTER OPINION NO. 84

Honorable Donald L. Manford  
Senator-8th District  
9409 Oakland  
Kansas City, Missouri 64138



Dear Senator Manford:

This opinion is written responding to your question whether a labor union can enter into an agreement with a city (Independence) relative to pay and working conditions and exclude the fire chief and assistant fire chief from such contract when such city employees are members of the union.

Initially, you refer to and we desire to note a caveat that there is no agreement or contract as that term is generally understood entered into between a city and a union. We have held that the proposals adopted or modified as provided in Section 105.520, V.A.M.S. by the public body are not enforceable in a court of law and is not a contract. See *City of Springfield v. Clouse*, (Mo.) 206 S.W.2d 635 and our opinions, No. 68, dated May 6, 1966, addressed to Representative Garret, et al, and No. 373, dated October 17, 1967, addressed to the Representative Thompson (enclosed).

Under Section 105.520, V.A.M.S., the public body can adopt, modify or reject the proposed ordinance, resolution, bill or other form (of proposal). State ex rel. *Missey v. City of Cabool*, (Mo.) 441 S.W.2d 35, 41. If the governing body has this statutory authority, it seems clear to us that the governing body (in this case, a city) may exclude administrative and executive personnel (the chief and assistant chief of the fire department in this case) from the operation of their ordinances in their discretion. State ex rel. *Missey v. City of Cabool*, supra, l.c. 41.

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Whether an employee (not within the excepted group) comes within the terms and effect of any written proposals between the union and the city (in this case) depends on the ultimate action taken by the appropriate administrative, legislative or other governing body when the written, proposals in the form of an ordinance, resolution, bill or other form (of proposal) are submitted for adoption, modification or rejection under Section 105.520, V.A.M.S. If the appropriate administrative, legislative or other governing body excludes administrative and executive personnel (the fire chief and assistant fire chief) from the operation of the collective bargaining proposals as adopted, then that limited and specific class of employees are not covered by nor included in the operation of a collective bargaining proposals reduced to the form of an ordinance etc. ultimately adopted by the appropriate governing body. Accordingly, we conclude such employees (excluded by their ultimate action of the governing body on the proposals) are not covered under the ordinance, resolution, bill or other form of proposal ultimately adopted by the governing body even though they may be members of the union.

Thank you for referring the question to me, and I trust the letter explains the matter fully.

Yours very truly,

JOHN C. DANFORTH  
Attorney General

Enclosures:

Op.No. 68, Garret, 5-6-66  
Op.No. 373, Thompson, 10-17-67