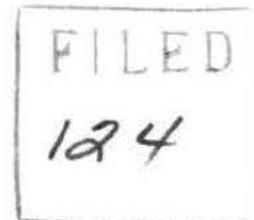


Answer by letter-Wieler

March 4, 1970

OPINION LETTER NO. 124

Honorable Joe D. Holt  
State Representative  
District No. 102  
Baker Building  
Fulton, Missouri 65251



Dear Representative Holt:

This is in response to your request for an opinion clarifying or modifying Opinion Letter No. 295, issued to you on August 29, 1969. In your earlier opinion, you asked if Section 77.330, RSMo 1959, required the mayor of a third class city to submit to each newly elected city council the person he had appointed to the office of city counselor as authorized by ordinance. In answering that request, it was our opinion that the city counselor, once appointed and qualified, held office for the term thereof and until his successor was appointed and qualified, unless he was removed under the provisions of Section 77.340, RSMo 1959, or otherwise. In arriving at this decision, we assumed that the city counselor was appointed for a fixed term of office. However you now desire our opinion where the appointment is not for a fixed term, i.e., the appointment of the city counselor is for an indefinite period of time, without designation as to the end of his term or of a length of term in years, or any other definite determination as to the length of time he should serve.

Section 98.340, RSMo 1959, provides that any third class city ". . . may, by ordinance, provide for the office of city counselor and his duties and compensation. . . ." Where the mayor is authorized by city ordinance to appoint a city counselor, his appointment must be made with the consent and approval of a majority of the members elected to the city council, as set forth in Section 77.330, RSMo 1959. Once appointed and qualified by the mayor and the majority of the city council, a city counselor in a third class

Honorable Joe D. Holt

city where the city ordinances do not set forth a specific term of office holds said office until removed for cause or under the provisions of Section 77.340, RSMo 1959. Said section provides:

". . . The mayor may, with the consent of a majority of all the members elected to the council, remove from office any appointive officer of the city at will; and any such appointive officer may be so removed by a two-thirds vote of all the members elected to the council, independently of the mayor's approval or recommendation. . . ."

Since he holds office at the pleasure of the appointing power, it is not necessary to resubmit the name of the city counselor to every newly elected city council.

Also, the possibility that such a term of office may exceed four years does not contravene Article VI, Section 10 of the Missouri Constitution which provides:

"The terms of city or county offices shall not exceed four years."

In State ex rel. Kane v. Johnson, 123 Mo. 43, 27 S.W. 399, 401 (1894), the Missouri Supreme Court in dealing with the forerunner of the above constitutional section which also provided that terms of office for city officers should not exceed four years said:

". . . This section simply means that, when the term of office is fixed by any law or ordinance, it shall not exceed four years, but where it is not fixed, and where it may be terminated at any time, at the pleasure of the appointing power, it has no application, because of the uncertain term of the office. . . ."

Therefore, it is the opinion of this office that such a city counselor, once appointed and qualified, holds office until he is removed under the provisions of Section 77.340, RSMo 1959, or otherwise and it is not necessary to resubmit his name to each newly elected city council.

Yours very truly,

JOHN C. DANFORTH  
Attorney General