

Answer by Letter (Klaffenbach)

February 18, 1971

OPINION LETTER NO. 166

Honorable Earl L. Sponsler
State Representative
126th District
R.F.D. 2
Cabool, Missouri 65689



Dear Representative Sponsler:

This opinion is in response to your request in which you ask the following question:

"In a fourth class city, after the office of elected marshal has been abolished by ordinance enacted pursuant to a vote of the people under provisions of Section 79.050 RSMo., can the proposition to establish the office of elected marshal be forced to a vote of the voters by initiative petition?"

Section 79.050, RSMo 1969, provides:

"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

Honorable Earl L. Sponsler

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 collector, 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."

In our Opinion Letter No. 100, dated December 1, 1961, issued to the Honorable Robert Young, copy enclosed, we held that the referendum provision of the Missouri Constitution, Section 49 of Article III, applies only to referendum on laws passed by the General Assembly and does not provide for referendum on municipal ordinances. It likewise follows that the constitutional provision is not a constitutional grant to the voters of municipalities to propose ordinances by initiative. The legislature has in various instances, which we will not enumerate here, authorized the use of the initiative process by the voters in municipalities. We find no such express authorization with respect to the instant situation.

We conclude that there is no rule or express statutory or constitutional authority which would authorize the use of the initiative process in this case. In the absence of such authority, there is no right to the initiative process. 5 McQuillin, Mun. Corp. (3rd Ed.), p. 201.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure:
Opinion Letter No. 100,
Young, 12/1/61