

CITIES, TOWNS & VILLAGES: A third class city with the Mayor-council form of government cannot
CITY COLLECTOR: abolish the office of collector and
ELECTIONS: appoint a member of the city clerical staff or any other person to collect the city's taxes. Under Section 77.370, RSMo 1969, a third class city with Mayor-council form of government can abolish by ordinance the office of city collector only when the city contracts for the collection of taxes by the county collector or township collector.

OPINION NO. 70

March 8, 1972

FILED
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Honorable A. Basey Vanlandingham
Missouri Senate, District 19
Room 333 Capitol Building
Jefferson City, Missouri 65101

Dear Senator Vanlandingham:

This opinion has been prepared in response to your recent request. The question you presented in that request was:

"May the City of Fulton, Missouri, a city of the third class, under the 4-year Mayor-Council form of government, abolish the office of City Collector and appoint a member of the City clerical staff as a collector or any other qualified person, to collect the City's taxes?"

The office of collector in a third class city under the Mayor-council form of government is established by Section 77.370, RSMo 1969. The revelant portions of that statute state:

"Except as hereinafter provided, the following officers shall be elected by the qualified voters of the city: Mayor, police judge, attorney, assessor, collector, treasurer and, except in cities which adopt the merit system police department, a marshal.

* * *

"Whenever a city contracts for the assessment of property or the collection of taxes by the county or township assessor or collector,

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respectively, as authorized by section 70.220, RSMo, the city council shall by ordinance provide that at the expiration of the term of the then city assessor or collector, as the case may be, the office is abolished and thereafter no election shall be had to fill the office; except that in the event the contract expires and, for any reason, is not renewed, the council may by ordinance provide for the election of such officer at the next and succeeding regular elections for municipal officers."

The issues presented in your request are similar to those in a request made by the city clerk of a fourth class city in 1937. The clerk stated that in their city it was customary for the mayor to appoint as collector the person who was elected marshal. That procedure was being questioned. At that time the office of collector in fourth class cities was established by Section 6951, RSMo 1929, a statute similar to Section 77.370, RSMo 1969. This statute stated:

"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, marshal, collector and board of aldermen, 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, * * *"

Our opinion No. 83 issued April 1, 1937 held that under this statute a marshal and a collector both were to be elected and that the mayor had no right to appoint such officers. The conclusion of that opinion, a copy of which is enclosed, was:

"It is therefore the opinion of this department that the collector of a city of the fourth class must be elected and that if such office is not on the ballot, the electors may write in the name of a qualified person for such office."

Therefore, unless the office of collector can be validly abolished it is our opinion that the collector of a city of the third class having the Mayor-council form of government must be elected.

Your request goes beyond the scope of our 1937 opinion by proposing that (1) the office of city collector be abolished, and (2) the duty of collecting the city's taxes be assigned to a member of the city clerical staff or any other qualified person. It is our

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opinion that in the context of your request the city would have no power to accomplish by ordinance either of these proposals.

A general premise of the law of municipal corporations is that a municipal corporation derives its powers from the state legislature, rather than directly from the people. Therefore a municipal corporation possesses only those powers expressly contained in enabling legislation and those powers necessarily implied in that legislation. The office of collector was established by Section 77.370, RSMo 1969. Subsection 3 of that section gives the city council the power to abolish the office of collector whenever the city has contracted for collection of taxes by the county or township collector. We find no other statute which would appear to give a third class city the power to abolish the office of collector. Because the proposal to abolish the office of collector is not related to a city contract for the collection of taxes by the county or township collector, the proposal in your request to abolish the office of collector does not fall within the power to abolish under Section 77.370, RSMo 1969. Therefore, it does not appear that the city has been given power by statute to abolish the office of collector in the manner you have proposed. This principle is summarized at 62 C.J.S. 899, Municipal Corporations, Section 467, which states:

"An office created by the legislature may not be abolished by the city unless the city council is given the power by statute to do so."

A similar statement summarizing this principle appears at 56 Am. Jur.2d 298, Municipal Corporations, Section 238. In addition Section 71.010, RSMo 1969 applies:

"Any municipal corporation in this state, whether under general or special charter, and having authority to pass ordinances regulating subjects, matters and things upon which there is a general law of the state, unless otherwise prescribed or authorized by some special provision of its charter, shall confine and restrict its jurisdiction and the passage of its ordinances to and in conformity with the state law upon the same subject."

We believe the city could not abolish the office of collector, except in conjunction with arrangements described in Section 77.370, RSMo 1969, without violating this section. Therefore it is our opinion that the city could not abolish the office of collector as you have proposed in your request.

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The second proposal of your request was that the city appoint a member of its clerical staff or any other qualified person to collect the city's taxes. Sections 94.080 to 94.180, RSMo 1969 indicate that it is the city collector's duty to collect the city's taxes. Section 77.370, RSMo 1969 gives a third class city under the Mayor-council form of government the power to contract with the county or township collector for the collection of taxes. We find no other section which would give such a city the power to assign by ordinance the duty of collecting the city's taxes to any other person or agency. In Pearson v. City of Washington, 439 S.W. 2d 756 (Mo. 1969) the Missouri Supreme Court held invalid parts of a city ordinance which established the office of city administrator and which assigned to that office duties which were assigned by statute to the mayor and the city council. In reaching that decision the court stated:

"Municipal corporations owe their origins to, and derive their powers and rights wholly from the state, and 'where the Legislature has authorized a municipality to exercise a power and prescribed the manner of its exercise, the right to exercise the power given in any other manner is necessarily denied.' . . . In the exercise of the legislative powers granted to it by the Legislature, a municipal corporation can enact no ordinance . . . 'which contravenes the statutes' of this state."
l.c. 760

In addition Section 71.010, RSMo 1969 would also require the ordinance which assigns the duties of collecting the city's taxes to conform with the general state statutes which assign those duties to the city collector or to the county or township collector with whom the city has contracted. Therefore, it is our opinion that a third class city of the Mayor-council form of government does not have the power to appoint a member of the city clerical staff or any other qualified person to collect the city's taxes.

CONCLUSION

It is the opinion of this office that a third class city with the Mayor-council form of government cannot abolish the office of collector and appoint a member of the city clerical staff or any other person to collect the city's taxes. Under Section 77.370, RSMo 1969, a third class city with Mayor-council form of government can abolish by ordinance the office of city collector only when the city contracts for the collection of taxes by the county collector or township collector.

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The foregoing opinion which I hereby approve was prepared by my assistant, Stephen D. Hoyne.

Very truly yours,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 83
4-1-37, Smith