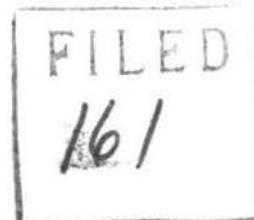


May 24, 1972

OPINION LETTER NO. 161
Answer by Letter - Klaffenbach

Honorable A. Basey Vanlandingham
Missouri Senate, District 19
Post Office Box 711
Columbia, Missouri 65201



Dear Senator Vanlandingham:

This opinion is in response to your question in which you ask whether the city attorney of a third class city must represent the board of public works or whether such a board may employ private counsel.

The statute with respect to the duties of a city attorney in third class cities is Section 98.330, RSMo 1969, which provides:

"It shall be the duty of the city attorney to prosecute and defend all actions originating or pending in any court in this state to which the city is a party, or in which the interests of the city are involved, and shall, generally, perform all legal services required in behalf of the city. In any complaint made before the police judge, the city attorney may, if in his judgment the interest of the city demands it, require the complainant, or party at whose instance the complaint is made, to give security for costs, to be approved by the police judge, before proceeding further with such cause."

Section 98.340, RSMo 1969, also provides:

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

Honorable A. Basey Vanlandingham

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)

We find no authority for the board of public works to employ private counsel. Section 91.500, RSMo 1969 authorizes the board to appoint a chief superintendent and other subordinates, however, in our view such section does not authorize the employment of private counsel.

By comparison we refer you to our enclosed opinion, No. 131, dated June 26, 1964 to Hollingsworth, in which we held that a county planning commission does not have the authority to employ legal counsel and that the prosecuting attorney must act for such planning commission. We believe that the reasoning in that opinion is applicable in this instance also, and therefore, conclude that the board of public works has no authority to employ private counsel.

Very truly yours,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 131
6/26/64, Hollingsworth