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March 22, 2000

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OPINION LETTER NO. 239-2000

Claire C. McCaskill  
State Auditor's Office  
224 State Capitol  
Jefferson City, MO 65101

Dear Ms. McCaskill:

You have asked the following question:

May a third class city establish a benefit package whereby city officers and councilmen receive \$10,000 upon their separation from the city?

In your request for an opinion you state that the city of Wellston, a third class city, has adopted by ordinance a benefits package for city officials (members of the city council, mayor, and treasurer) which includes a payment of \$10,000 when the individual ceases to serve as a city official if the city official has served for at least ten consecutive years and did not cease to be a city official for cause.

Within your request you raise questions whether this ordinance violates either Article VII, Section 13, or Article III, Section 39(3) of the Missouri Constitution. A question is also raised whether Section 70.615 RSMo prohibits this sort of benefits package.

Section 70.615 RSMo provides in pertinent part:

--After October 13, 1967, a political subdivision shall not commence coverage of its employees who are neither policemen nor firemen under another plan similar in purpose to this system, other than under this system, except

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the federal Social Security Old Age, Survivors, and  
Disability Insurance Program, as amended;

There are exceptions to this prohibition which are not relevant to the question you have raised. "This system" referenced in the statute is "Missouri Local Government Employees' Retirement System," also known as LAGERS.

This statute clearly proscribes the establishment of a pension plan other than LAGERS for city employees, except for firemen or policemen. This office has previously so concluded. See Attorney General Opinion Letter 23-1979 and Attorney General Opinion 128-1972, copies of which are attached. Because the benefits package for the city of Wellston violates Section 70.615 RSMo, it is unnecessary to address the constitutional issues raised in your request.

Very truly yours,



JEREMIAH W. (JAY) NIXON  
Attorney General

Enclosures