

PUBLIC OFFICERS: Mayor cannot compel city council to ratify his appointments; Mayor cannot make appointments without the consent of majority of city council.

May 20, 1936.

5-21



Mr. Carl T. Buehler,  
Mayor of Eldon,  
Eldon, Missouri.

Dear Sir:

This department is in receipt of your letter of May 5 wherein you make inquiries relative to the appointive officers of the City of Eldon.

Eldon has a population of more than 3,000 persons; therefore, according to statute, it is a city of the third class and its elections and appointments are governed by the laws relating to cities of the third class. Your first question in substance is:

"Is there a state law compelling aldermen to ratify appointments of the mayor unless they can show that the appointee is not qualified or otherwise unfit for the position?"

Section 6733, R.S. Mo. 1929 is as follows:

"The mayor, with the consent and approval of a majority of the members elected to the city council, shall have power to appoint a street commissioner and such other officers as he may be authorized by ordinance to appoint."

It is plain from the terms of the above section that the selection of the appointive officers can be made only by the Mayor with the consent and approval of a majority of the members of the city council. We are therefore of the opinion that the matter of ratifying your appointments is discretionary with the members of the council, and if said members see fit to refuse

to concur in the appointments you make, we know of no law that can compel them to do so.

Your next question is:

"If the council gives the mayor permission to oust a certain appointee but refuses to ratify the mayor's appointee as successor, can the mayor place an appointee in charge until a permanent or legal appointment is made?"

The statute relating to removal of officers is Section 6729, R.S. Mo., 1929, which provides:

"The mayor may, with the consent of a majority of all the members elected to the city council, remove from office, for cause shown, any elective officer of the city, such officer being first given opportunity, together with his witnesses, to be heard before the council, sitting as a court of impeachment. Any elective officer may, in like manner, for cause shown, be removed from office by a two-thirds vote of all the members elected to the city council, independently of the mayor's approval or recommendation. 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. The council may pass ordinances regulating the manner of impeachment and removals."

Bearing in mind the terms of Section 6733, supra, it is the opinion of this department that you can make no appointments without the consent and approval of a majority of the members of the city council.

Respectfully submitted,

OLLIVER W. NOLEN,  
Assistant Attorney General.

APPROVED:

---

JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General.

OWN:AH