

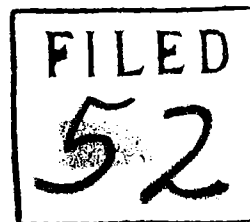
CITIES, TOWNS
AND VILLAGES:
INSURANCE:

Cities of Third Class in Missouri, operating with city manager form of government and having authority under Section 78.570, RSMo 1949, to fix compensation of its employees, may by ordinance provide that as part of said compensation it will defray the premium cost of group life and hospitalization coverage on its employees.

April 8, 1959

Filed: #52

Honorable C. Lawrence Leggett
Superintendent
Division of Insurance
Jefferson Building
Jefferson City, Missouri



Dear Mr. Leggett:

This opinion is in answer to your recent inquiry reading as follows:

"A question has been raised with us by certain interested parties as to the right of the City of Mexico, Missouri, which is a third class city under our laws, operating on the City Manager Plan, to use the city's funds to pay the premiums on a group insurance contract covering the employees of that city. The group insurance would provide life, accidental death and dismemberment, accident and sickness, hospital expense, surgical expense, and hospital-medical expense coverage. The program would cover appointive positions only and would not include elective officials. We are enclosing a copy of Ordinance No. 2048, paragraph 3 of which contains the ordinance authorizing this insurance program.

"May I have your opinion as to whether or not such third class city may validly adopt such an ordinance and provide such an insurance program."

The city of Mexico, Missouri, is a city of the Third Class with city manager form of government authorized by Sections 78.430 to 78.640, RSMo 1949, as amended. Ordinance No. 2048 of the city of Mexico provides:

Honorable C. Lawrence Leggett

"Bill No. 58-111

Ordinance No. 2048

AN ORDINANCE TO AMEND ORDINANCE NO. 1992 OF THE ORDINANCES OF THE CITY OF MEXICO, MISSOURI BY ADDING THE POSITION OF 'SUPERINTENDENT OF BUILDINGS AND GROUNDS MAINTENANCE' UNDER ADMINISTRATIVE AND MANAGEMENT OF SECTION 1 AND ASSIGNING THE GRADE THERE-TO; AMENDING SECTION 7 TO PROVIDE FOR A RATE OF COMPENSATION FOR DIRECTOR OF RECREATION; ADDING A NEW SECTION DESIGNATED 9(a) PROVIDING FOR ADDITIONAL COMPENSATION FOR ALL EMPLOYEES IN THE FORM OF GROUP HOSPITALIZATION AND LIFE INSURANCE PLAN PREMIUMS TO BE PAID BY THE CITY OF MEXICO

"BE IT ORDAINED BY THE COUNCIL OF THE CITY OF MEXICO, MISSOURI AS FOLLOWS:

"1. Section 1 of Ordinance No. 1992 of the Ordinances of the City of Mexico, Missouri is hereby amended by adding to that portion of Section 1 under Administrative and management the position of 'Superintendent of Buildings and Grounds Maintenance', Class Grade 25.

"2. Section 7 of Ordinance No. 1992 of the Ordinances of the City of Mexico, Missouri is hereby amended by deleting the figures '\$1600' under 'annual' and the words and figures 'May - August \$150 September - April \$25' under 'semi-monthly' in the line for 'Director of Recreation' and enacting in lieu thereof the figures '\$2100' under 'annual' and the words and figures 'June through August \$200, September through May \$50' under 'semi-monthly' in said line for 'Director of Recreation'. The rate of compensation for such position of 'Director of Recreation' shall henceforth be as shown by the amended words and figures herein set forth.

Honorable C. Lawrence Leggett

"3. There is hereby enacted a new Section designated 9(a) to be a part of Ordinance No. 1992 of the Ordinances of the City of Mexico, Missouri to become a part of said Ordinance following Section 9 thereof to read as follows:

'Section 9(a) - In addition to the rates of compensation provided for each employee as hereinabove set forth the City of Mexico shall maintain and pay the premiums on a group hospitalization and life insurance plan in which each employee of the City shall be enrolled as a member. On the first day of February annually contract with a recognized insurance company licensed to underwrite such plans for the State of Missouri shall be entered into in behalf of the City by the City Manager to provide coverage for City employees on the following minimum basis:

(a) A hospitalization program including surgical benefits which will pay a minimum of \$8.00 per day for hospital room, plus other medical expenses;

(b) One Thousand Dollars (\$1,000) per employee life insurance on a term basis.

'The insurance carrier shall be designated by the Council by motion following the receipt of proposals by such insurance companies as offer to underwrite the plan. Proposals shall be received annually between January 15th and January 20th and the Council shall select the insurance carrier in a meeting between January 20th and January

Honorable C. Lawrence Leggett

21st for the following year beginning February 1st. The premium cost of such plan shall be carried in budget account "Unclassified Account No. 9" under "Miscellaneous Services 7 Insurance Hospital and Life". The amount so paid on each employee shall not be considered as taxable income to such employee and shall not be deemed part of his compensation for tax reporting purposes, although for the purposes of this Ordinance such premiums shall be considered partial compensation for such employee's services to the City of Mexico.'

"4. This ordinance shall be in effect from and after its passage.

"Passed this 26 day of January, 1959.

Clarence S. Torreyson
MAYOR

"ATTEST:

Fae Lowry
CITY CLERK"

Under paragraph 3 of Ordinance No. 2048, supra, we find that Section 9(a) becomes a part of Ordinance No. 1992 of the ordinances of the City of Mexico, and specifically provides that the amounts to be paid by the city to cover premiums on "a group hospitalization and life insurance plan in which each employee of the City shall be enrolled as a member," are to "be considered partial compensation for such employee's services to the City of Mexico."

Section 78.440, RSMo 1949, discloses the applicability of general statutes to cities of the Third Class which have adopted the city manager form of government and provides, in part, as follows:

"All laws governing any city under its former organization and not inconsistent with the provisions of sections 78,430 to 78.640, shall apply to and govern such city after it

Honorable C. Lawrence Leggett

adopts the form of government herein provided, or all bylaws, ordinances and resolutions lawfully passed and in force in any such city under its former organization shall remain in force until altered or repealed by the council elected under the provisions of said sections. * * * The operation of any of said sections governing cities of the third class, which may be inconsistent with the provisions of said sections shall be suspended in those cities adopting the said sections."

Section 78.570, RSMo 1949, sets forth the powers of the city council of a city operating with a city manager form of government as provided for in Sections 78.430 to 78.640, RSMo 1949, in the following language:

"78.570. Powers of council -- city manager.--
1. Except as herein otherwise provided the council of any city organizing under sections 78.430 to 78.640, shall have all of the powers now or hereafter given to the council or to the mayor and council jointly, under the law by which such city adopting said sections was governed under its former organization; and shall have such power over and control of the administration of the city government as is provided in said sections.

"2. It shall be the duty of the council to pass all ordinances and other measures conducive to the welfare of the city and to the proper carrying out of the provisions of sections 78.430 to 78.640. It shall appoint a suitable person not a member of the council to be the administrative head of the city government whose official title shall be 'city manager.' The council shall also provide for all offices and positions in addition to those herein specified, which may become necessary for the proper carrying on of the work of the city, and shall fix the salary and compensation of all officers and employees of the city not herein provided for. All officers of the city shall be paid

Honorable C. Lawrence Leggett

in equal monthly installments for their services and all employees of the city shall be paid monthly or at such shorter periods as the council shall determine. The creation of all offices and salaries attached thereto, which may be provided for by the council under sections 78.430 to 78.640, shall be by ordinance, and they shall all be for an indefinite term. The council shall also provide office rooms at the city hall or at some other convenient and suitable place in the city for the transaction of the business of the city and for the convenience of its officers."

In the second paragraph of the foregoing statute, Section 78.570, supra, we find a mandatory power vested in the city council to fix the salary and compensation of all officers and employees not provided for in this special law. The creation of offices and the fixing of salaries attached thereto is required by the statute to be done by ordinance. The statute contemplates officers as well as employees, and the remuneration of officers is referred to as "salary" and remuneration of employees is referred to as compensation. However, the statute contains no prohibition against fixing the compensation of employees by ordinance, and that is normal procedure.

Section 78.570, RSMo 1949, quoted supra, gives authority to a city such as Mexico, Missouri, to fix the compensation of its employees, and we find no directive therein that such compensation must be only in stated money consideration. Under such circumstance, we rely on the rule announced in the case of *Petition of City of Liberty, (Mo.)*, 296 S.W. (2d) 117, 1.c. 123, as follows:

"The rule is that * * * 'where there is an express grant to a city without the method or details of exercising such power prescribed, the City Council has authority to exercise the power granted it in any reasonable and proper manner.' *Dodds v. Kansas City*, 347 Mo. 1193, 1200, 152 S.W.(2d) 128, 131. See, also, *State ex rel. City of Fulton v. Smith*, 355 Mo. 27, 194 S.W.(2d) 302."

Honorable C. Lawrence Leggett

An examination has been made of statutes having general application to Third Class cities, Chapter 77, RSMo 1949, and no prohibition has been found which would prohibit a city of the Third Class from providing, as part of the compensation to its employees, the cost of group hospitalization and group life insurance on its employees.

In the case of Hickey v. Board of Education of St. Louis, 363 Mo. 1093, 256 S.W.(2d) 775, the contention was made that to allow the Board of Education of St. Louis to defray the premium cost of Workmen's Compensation coverage for its employees would violate Sections 23 and 25, Art. VI, Missouri's Constitution of 1945, prohibiting a city or other political subdivision of Missouri from granting public money or thing of value to or in aid of an individual. The Supreme Court of Missouri spoke as follows in the Hickey case, supra, in the following language at 363 Mo. 1.c. 1044:

"The weight of authority is that expenditures of public moneys for workmen's compensation for public employees are for public purposes and are not 'grants' of public money."

In the case of State ex rel. Thompson v. Memphis, 251 S.W. 46, 147 Tenn. 658, 27 A.L.R. 1257, 1.c. 1263, the Supreme Court of Tennessee upheld the right of the City of Memphis to take out group insurance on employees in the city's water department, and spoke, in part, as follows:

"It could hardly be contended but that the governing powers would have the right to increase the annual wages of each employee of the water department \$18 per annum, if justified by existing conditions. This, in effect, is what it did when it took out said policy of group insurance, but from an economic basis it concluded that better results would be obtained as to both parties by investing it in insurance instead of paying the money to the employee. Ordinarily, what can be done indirectly can be done directly. If a city can increase the wages of its employees, why not invest the increase in insurance for them, instead of paying it to them direct, if, by so doing, they are better satisfied and the city obtains better service?"

Honorable C. Lawrence Leggett

CONCLUSION

It is the opinion of this office that a city of the Third Class in Missouri, operating with city manager form of government, and having authority under Section 78.570, RSMo 1949, to fix the compensation of its employees, may by ordinance provide that as a part of said compensation it will defray the premium cost of group life and hospitalization coverage on its employees.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

JLO'M:om