

CITIES - Cities of the third class operating under an alternative form of government shall elect a Mayor and Council at the regular biennial municipal election.

November 23, 1937

11-29



Honorable D. S. Mayhew
City Attorney
Monett, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion reading as follows:

"As City Attorney I am interested in Section 6723 of 1937 Session Acts at page 385 which repealed Section 6723 of the Revised Statutes of 1929 pertaining to the term for Mayor in Cities of the Third Class, which changes the term of the Mayor from 2 to 4 year term. We are under the Alternative Form of Government for Cities of the Third Class Section 6909 governs us and we have less than 12000 population and elect two Councilmen and a Mayor for 2 years.

"Does the Repealing of Section 6723 Revised Statutes of 1929 also repeal Section 6909 by implication and do we under the alternative form of government elect for 2 years under Sec. 6909 or are governed by Sec. 6723, Page 385 of Session Acts of 1937.

"This has been put up to me as City Attorney which causes me to ask for an opinion. In Bryant vs. Russell, 127 Mo. 422, 30 S. W. 107, we have this language in the opinion of that case, on Construction of Statute. 'It is a general rule of construction of laws that a later Statute covering the subject matter of a former one, will repeal it to the extent that

they conflict, whether any reference is made by the latter to the older statute or not.' "

We have considered Section 6723, as amended by the Laws of Mo. 1937, at page 385, and find that the repealing act referred to only changes the term of the Mayor of a city of the third class from two years to four years. This conclusion is obvious when you consider that Section 6723 as amended, supra, is to be found under the provisions of Article IV of Chapter 38, R. S. Mo. 1929 relating to cities of the third class.

We note from your request for an opinion that your city is operating under an alternative form of government for cities of the third class, as provided for by Article VI of Chapter 38, R. S. Mo. 1929. In effect and substance, any city of the third class operating under a special charter or having a population entitling such city to become a city of the third class may be organized as a city under the provisions of Article VI, supra, by proceeding as provided for in said Article. Section 6906.

If such a city has elected to operate under an alternative form of government, which cities may do if they have the required population and are a city of the third class, then the Mayor and Councilmen of such city or cities must be elected as provided by Section 6909. It is provided in this section, Section 6909, R. S. Mo. 1929, in substance and effect, that every such city organizing under the alternative form of government shall elect, at the regular biennial municipal election, a Mayor and two Councilmen in cities having a population of over 3,000 and less than 12,000. This is a situation as exists in your city we necessarily assume from what you have stated relative to your city.

The sections to which you have referred us need not be construed, because where the language of the statute is plain and unambiguous and conveys a clear and definite meaning, there is no need of resorting to auxiliary rules in the construction of the same. From this, it follows that the statute must be given its plain and obvious meaning. State ex rel. Jacobsmeyer vs. Thatcher, 92 S. W. (2d) 640; Columbia Weighing Maching Company vs. Rockwell, 38 S. W. (2d) 508.

CONCLUSION

In view of the above, it is the opinion of this department that Section 6723 of R. S. Mo. 1929, as amended by the Laws of Mo. 1937, at page 385, does not repeal Section 6909, R. S. Mo. 1929 relating to cities of the third class operating under an alternative form of government. Cities operating under an alternative form of government shall continue to elect a Mayor and Councilmen at the regular biennial municipal election.

Yours very truly,

RUSSELL C. STONE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

RCS:FE