CITY NIGHT WATCHMEN@
NIGHT WATCHMEN:
CITY OFFICERS:
ARREST:

A night watchman's powers and duties in fourth class cities are to be prescribed by ordinance and include the power to arrest if given by ordinance.

April 14, 1959

Honorable Randolph E. Puchta
Prosecuting Attorney
Gasconade County
Hermann, Missouri

Dear Sir:

This is in reply to your letter of March 4, 1959, requesting an opinion on two questions regarding the powers and liabilities of a night watchman. Your questions read as follows:

"Does the Mayor and Board of Aldermen of a fourth class city under Sec. 79.230 RSMo. 1949 have the authority to give a night watchman the same powers and duties as an elected marshal?

"If not, would a night watchman appointed by the Mayor and Board of Aldermen and by ordinance given the same duties as a marshal be in violation of 562.180 R.S. Mo. 1949, when exercising or attempting to exercise the duties of the Marshal?"

The answer to the second question, whether or not a night watchman could be arrested for attempting to exercise the duties of the marshal, would necessarily depend upon a negative answer to your first question. Therefore, since we deem the answer to be in the affirmative, we will not attempt to answer your second question.

The Missouri Constitution of 1945 not being pertinent to the question at hand, we now pass to the applicable Missouri statutes in regard to the appointment of night watchmen.

The first applicable provision is Section 79.230, RSMo, providing for the appointment of night watchmen, which we now quote in part:

"The mayor, with the consent and approval of the majority of the members of the board of aldermen, shall have power to appoint a treasurer, city attorney, city assessor, street commissioner and night watchman, * * * *."

Section 79.290, RSMo, provides for the powers and duties of

"officers of every character," which, again, we quote in part:

> "The duties, powers and privileges of officers
> of every character in any way connected with
> the city government, not herein defined, shall
> be prescribed by ordinance. * * *"

The council could not by ordinance prescribe powers or duties to a night watchman which would conflict with duties specifically assigned to the city marshal by statute, i.e., duties in connection with city elections under Section 79.030, RSMo.

We next note that Section 79.470, RSMo, grants to the board of aldermen further power to prescribe powers and penalties to carry out and enforce ordinances.

The powers and duties of night watchmen are not set forth in the statute empowering their appointment, and consequently depend entirely on the grant thereof given by ordinance. A night watchman can arrest, providing this power is given by ordinance. Where the power to arrest has not been granted by ordinance, a night watchman has no inherent power to arrest. See City of Lamar v. Hewitt, 60 Mo. App. 314, at 315, wherein this rule was stated by the court as follows:

> "The charter of cities of the fourth class
> (article 5, chapter 30, Revised Statutes,
> 1889) does not empower a night watchman to
> make an arrest. Section 1652 of the statute
> provides that the 'duties, powers and privi-
> leges of all officers of every character in
> any way connected with the city government,
> not herein defined, shall be defined by
> ordinance.' The complaint in this case fails
> to allege the ordinance defining the duties
> of a night watchman; or that any duties were
> defined by any ordinance. * * * * *"

Therefore, the powers other than the power to arrest also depend on extent of the grant by ordinance. In each instance the individual ordinance must be examined in the light of the exercise of authority by the night watchman.

CONCLUSION

A night watchman appointed under valid ordinance of a fourth class city may have the same powers as those given to the city

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marshal, providing that such ordinance grants these powers, and it is not a power confined exclusively to the office of city marshal by statute.

Yours very truly,

John M. Dalton
Attorney General

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