

STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

June 14, 1977

ATTORNEY GENERAL OPINION NO. 77- 198

Mr. George H. Herrelson, Jr.
Attorney at Law
528 Main Street
Post Office Box 49
Galena, Kansas 66739

Re: Cities--Police Officers--Appointment

Synopsis: In a city of the second class with a council form of government, only the mayor, by and with the consent of the council, is legally authorized to appoint police officers of such city.

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Dear Mr. Herrelson:

You inquire concerning the authority of the chief of police of a city of the second class to appoint and commission police officers of such city. You advise that the police chief of the City of Galena has appointed and commissioned auxiliary police officers, instructing them that they have the same authority to carry firearms, and other powers of law enforcement officers.

K.S.A. 14-201 provides in pertinent part thus:

"The mayor shall appoint, by and with the consent of the council, a municipal judge of the municipal court, a city marshal-chief of police, city clerk, city attorney, and may appoint policemen and such other officers as they may appoint policemen and such other officers as they may deem necessary."

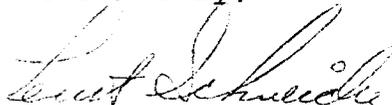
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I find no statutory distinction between regular and other law enforcement officers. K.S.A. 21-3110(10) defines the term thus:

"'Law enforcement officer' means any person who by virtue of his office or public employment is vested by law with a duty to maintain public order or to make arrests for crimes, whether that duty extends to all crimes or is limited to specific crimes."

The law enforcement powers of the city may be exercised only by those persons who are appointed and commissioned law enforcement officers as provided by statute. Under K.S.A. 14-201, that power of appointment is vested in the mayor, by and with the consent of the council. I find no statutory provision relating to cities of the second class whereby the police chief of such city is vested with this appointive power, in lieu of or in addition to that of the mayor, with the consent of the council. Thus, any individuals who now carry badges and firearms under color of an appointment as a city police officer should discontinue that practice unless and until they are duly appointed pursuant to K.S.A. 14-201.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj