



STATE OF KANSAS

Office of the Attorney General

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Curt T. Schneider
Attorney General

January 24, 1978

ATTORNEY GENERAL OPINION NO. 78- 33

The Honorable Van Gustin
Mayor of Toronto
City Hall
Toronto, Kansas 66777

Re: Cities--Ordinances--Necessity For

Synopsis: Action by the city governing body fixing or increasing the compensation of members of the governing body to be paid from funds of the city for the performance of their official duties may be accomplished only by ordinance, and not by resolution. The mayor has no power to veto a motion adopted by the governing body which does not constitute an ordinance.

* * *

Dear Mr. Gustin:

As mayor of the City of Toronto, you request my opinion upon two questions relating to the power of the city council. First, you inquire whether a mayor of a city of the third class can veto a motion which is made and seconded by members of the council and passed by a majority of the members voting thereon. I find no authority for the mayor to veto a motion adopted by a majority of the members of the council.

Secondly, you ask whether the city council may "raise their wages through a motion and second without an Ordinance being enacted." Apparently, the question is raised whether the council may alter their salaries by resolution, or whether such action must be taken by ordinance. In *Asher v. Hutchinson Water, Light and Power Co.*, 66 Kan. 496, 71 Pac. 813 (1903), the court quoted from an early legal treatise thus:

The Honorable Van Gustin
Page Two
January 24, 1978

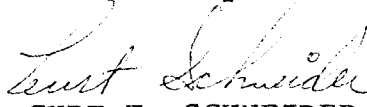
"Where the city council has power to act in a given case, and the mode of action is not prescribed by charter, it may proceed either by resolution or by ordinance."

However, in *Benson v. City of De Soto*, 212 Kan. 415, 510 P.2d 1281 (1973), the court drew some distinction between the two modes of action, quoting thus from McQuillin, *Municipal Corporations*, § 15.02 (3d ed.) thus, in pertinent part:

"Whether the municipal body should do a particular thing by resolution or ordinance depends upon the forms to be observed in doing the thing and upon the proper construction of the charter. In this connection it may be observed that a resolution deals with matters of a special or temporary character; an ordinance prescribes some permanent rule of conduct or government, to continue in force until the ordinance is repealed. An ordinance is distinctively a legislative act; a resolution, generally speaking, is simply an expression of opinion or mind concerning some particular item of business coming within the legislative body's official cognizance, ordinarily ministerial in character and relating to the administrative business of the municipality."

The fixing of the salaries of members of the council entails the exercise of legislative power, prescribing by a measure which has the force and effect of law the compensation which each shall be entitled to from the funds of the city for the performance of the duties of the office. In my judgment, the fixing of the salaries of the council members must be done by ordinance, and any change therein may be accomplished only by the amendment of an existing ordinance.

Yours truly,


CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj