



STATE OF KANSAS

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CURT T. SCHNEIDER
ATTORNEY GENERAL

October 19, 1978

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ATTORNEY GENERAL OPINION NO. 78- 336

Mr. Larry Shoaf
City Attorney of Haysville
Suite 530 - R. H. Garvey Building
300 West Douglas Avenue
Wichita, Kansas 67202

Re: Cities--Separation of Powers--Council

Synopsis: There is no Kansas constitutional provision mandating the separation of powers in Kansas municipal government. Although the mayor is vested with substantial executive authority in the conduct of municipal affairs, such executive power is not vested exclusively in the mayor, and it is within the authority of a city governing body to hear appeals by its employees pursuant to a duly enacted ordinance providing therefor, and to make such orders in the consideration of that grievance as it deems necessary and appropriate.

* * *

Dear Mr. Shoaf:

As city attorney for the City of Haysville, and on behalf of the governing body, you inquire concerning the respective powers of the city council and the mayor in the following matter. You advise that on September 13, 1978, a police officer holding the rank of captain at \$5.35 per hour was reduced in rank to patrolman at \$4.65 per hour by general order of the chief of police. On this date, the officer met with the chief of police to protest this action, and on the following day, he met with the chief of police and the mayor, who affirmed the action. On September 15,

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1978, the officer requested a grievance hearing before the city council pursuant to an employee's handbook which had been adopted by ordinance. The handbook provides in pertinent part thus:

"1. GRIEVANCE PROCEDURES:

A. It is the overall policy of the City that each employee has the right to pursue those items of general concern through the chain of command.

a. Chain of Command: If you have a grievance, take it up with your Department Head. Then if no agreement can be reached;

b. The Department Head and employee will meet with the Mayor. Then if no agreement is met;

c. Employee may appeal to City Council. If still not satisfied;

d. Employee may appeal to the courts.

B. Permanent employees who have completed the probationary period will be entitled to use the City grievance procedure.

C. All actions of the City Department Head, in reference to any grievance shall stand until, or unless overruled by the Mayor."

You advise that the officer's grievance was heard before the council in open session in a specially called meeting on October 12, 1978. The officer was represented by counsel, was permitted to cross-examine witnesses and to present evidence on his own behalf. At the conclusion of the hearing, the eight-member council voted, five to three, that the officer be reinstated to the rank of captain, be given the proper pay differential retroactively to September 13, 1978, and that the matter be purged from his personnel folder.

The handbook does not set forth what power, if any, the council has to implement or enforce its decision upon a grievance which it has heard. The question has been raised whether, under the separation of powers doctrine, the city council has only legislative

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power, with all executive and administrative power of the city vested in the mayor, and if so, whether it exceeded the bounds of its legislative power in entering the orders described above in respect to this officer's grievance.

Under the Kansas Constitution, the executive power is vested in the executive department, legislative power is vested in the legislature, and judicial power is vested in the unified court of justice. Kansas Constitution, Articles 1, 2 and 3. There is no similar constitutional separation of powers applicable to municipal governments in Kansas. Under Article 12, § 5(b), Kansas cities are "empowered to determine their local affairs and government" This corporate governmental power is vested in the city governing body and entails both administrative, or executive, power, as well as legislative powers. City councils commonly act by ordinance, for example. However, all ordinances are not legislative acts, for many ordinances are administrative in nature. At 56 Am.Jur.2d, *Municipal Corporations*, § 140, the writer states thus:

"In the vast majority of American municipalities . . . the legislative power of the corporation is vested in a municipal council, composed of representatives of the people, sometimes elected at large but more usually by wards or districts, and consisting sometimes of one chamber and sometimes of two. Executive and administrative, as well as legislative, functions were formerly vested in this council, as was also the power to elect all municipal officers not chosen directly by the people, but in more recent times the tendency has been, in the larger municipalities at least, to vest executive, administrative, and appointive powers in the mayor and to limit the council to legislative functions. *It is still the rule, however, that all powers granted to a municipal corporation are vested in the council unless expressly delegated to some other officer or body.*" [Emphasis supplied.]

The Kansas Constitution contains no provision directing a tripartite separation of powers in Kansas municipal government. Article 12, § 5 of the Kansas Constitution is a direct grant of both legislative and administrative powers to Kansas cities, which

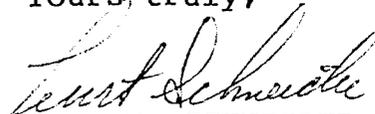
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shall be exercised by the governing body. Since the adoption of the home rule amendment in 1960, the Kansas legislature has repealed a number of statutory provisions describing in some detail the powers of governing bodies of cities of the second class, precisely because a statutory enumeration of those powers was no longer necessary.

A number of statutes continue to describe the powers of the mayor. K.S.A. 14-301, for example, provides that the "mayor shall have the superintending control of all the officers and affairs of the city, and shall take care that the ordinances of the city and this act are complied with." In addition, K.S.A. 14-307 provides that the mayor "shall be active and vigilant in enforcing all laws and ordinances for the government of the city," and he "shall cause all subordinate officers to be dealt with promptly for any neglect of violation of duty" Thus, the mayor is vested with substantial administrative authority in the conduct of city affairs. At the same time, this administrative authority is not constitutionally exclusive to the mayor alone, by virtue of his office. The council, as the corporate governing body, is not constitutionally prohibited from asserting an active and vigilant voice in the administrative conduct of city affairs.

In this instance, the handbook, which you had indicated was adopted by ordinance, provides for an appeal of a grievance to the city council if no agreement is reached between the employee after meeting with the department head and the mayor. The city council is vested with the general constitutional administrative authority of the city as a municipal corporation to take such action as it deems necessary and appropriate in the disposition of that grievance. I can find no constitutional basis for a conclusion that the council is wholly and entirely without any voice in the management and conduct of the city's affairs except a legislative voice. The Kansas Constitution does not impose upon municipal government a separation of powers such as that applicable to state government, and I can find no basis for concluding that the executive management of municipal affairs is entrusted exclusively to the mayor alone. Thus, in my opinion, it was within the constitutional authority of the council to assume jurisdiction over the appeal in this instance, and that its orders in regard to that grievance are not invalid by reason of any lack of executive authority in the council as the governing body.

Yours, truly,


CURT T. SCHNEIDER
Attorney General

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