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April 5, 1979

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ATTORNEY GENERAL OPINION NO. 79-45

Mr. Larry D. Shoaf
Attorney at Law
Suite 530, R. H. Garvey Building
300 West Douglas Avenue
Wichita, Kansas 67202

Re: Cities--Employees--Grievance Procedures

Synopsis: In accordance with its Charter Ordinance No. 3A, the City Council of Haysville is obliged to entertain an appeal from an aggrieved city employee who has satisfied all preliminary requirements thereto in the grievance procedure prescribed by Section V of the Employees' Handbook, pursuant to its amendment by the city's Resolution No. 78-4.

* * *

Dear Mr. Shoaf:

As city attorney for the City of Haysville, Kansas, you have requested our opinion regarding application of the city's Charter Ordinance No. 3A. You have asked our interpretation of certain provisions of this charter ordinance in conjunction with various provisions of the city's Resolution No. 78-4 and Section V of the City of Haysville Employees' Handbook.

Charter Ordinance No. 3A, *inter alia*, provides for the appointment of various city officers and the employment of personnel for the city departments. Said charter ordinance also makes provision for the termination of employees, including a procedure for the appeal thereof by an aggrieved employee. In this regard, the following language of Charter Ordinance No. 3A is pertinent:

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"If council approves employment, then the employer [employees] shall hold their position for an indefinite term; however, any officer, policeman, or employee may be terminated at any [time] subject to the provisions set forth in the City Employee Handbook as it pertains thereto. The officer, policeman or employee so grieved shall follow grievance procedures. If the grievance reaches appeal to the council, then the employee may request, in writing, a hearing before the council. The mayor shall cause the hearing to be placed on the agenda at the next regular council meeting. The request for a hearing before the council must be made within thirty (30) days after the grievance board has made their recommendation to the mayor and department head." (Emphasis added.)

The foregoing quoted excerpt from the charter ordinance discloses that an employee whose employment is terminated is entitled to appeal such termination through a grievance procedure. The grievance procedure is addressed by the charter ordinance itself, but said ordinance also incorporates by reference the grievance procedures set forth in the City Employees' Handbook. These provisions were amended by the city's Resolution No. 78-4 to read as follows:

"SECTION V

"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.

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- "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."

At the time Charter Ordinance No. 3A was adopted, and prior to its amendment by Resolution No. 78-4, Section V of the Employees' Handbook established a grievance board, prescribed the duties, responsibilities and rights of this board and included in the foregoing grievance procedure a requirement that an aggrieved employee must file a grievance with this board prior to appeal to the city council. These provisions were eliminated by Resolution No. 78-4; yet, the charter ordinance requires that an aggrieved employee's appeal to the city must be made within thirty days "after the grievance board has made their recommendation to the mayor and department head." Thus, the thrust of your inquiry concerns the force and effect of Resolution No. 78-4 in amending the grievance procedure in the Employees' Handbook.

Even though the adoption of Resolution No. 78-4 created an inconsistency between the Employees' Handbook and Charter Ordinance No. 3A, we do not find that such inconsistency creates an irreconcilable conflict in the city employees' grievance procedure. From our reading of Charter Ordinance No. 3A, it is clear that, while this ordinance provides city employees the right to a grievance procedure, including the right to a hearing before the city council, the basic procedure is to be prescribed by the Employees' Handbook. We have not been advised as to the legislative source for the Handbook's promulgation, but even though reference is made to the Handbook in the charter ordinance, there is nothing to indicate that it is dependent on the ordinance for its existence or efficacy. Thus, absent any other ordinance of the city to the contrary, it is within the city council's prerogative to amend the handbook from time to time by resolution of the council, and we find that Resolution No. 78-4 was a valid exercise of that authority. By virtue of this resolution, therefore, the grievance procedure for city employees no longer requires that an employee file his grievance with a grievance board prior to appeal to the city council.

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As to the continued reference to the grievance board in the charter ordinance, you have correctly noted that Resolution No. 78-4 cannot operate to amend directly or by implication Charter Ordinance No. 3A, so as to remove such inconsistent reference. A city's charter ordinance can be "repealed or amended only by charter ordinance or by enactments of the legislature applicable to all cities." Kan. Const., Art. 12, §5(c)(4). Thus, the charter ordinance's reference to the grievance board must remain, but in our view it is of no force or effect.

Charter Ordinance No. 3A does not create a grievance board, nor does it require that an aggrieved employee seek redress from the grievance board as a condition precedent to appeal to the city council. It merely requires that such appeal be made within thirty (30) days after the grievance board has made its recommendations. Despite the obvious implications this requirement raises as to the existence of a grievance board, in light of our conclusions regarding the validity of Resolution No. 78-4 in abolishing such board, we believe the charter ordinance provision concerning the grievance board must be viewed as a nullity. We cannot construe the implications raised by such provision as overriding the specific legislative action accomplished by Resolution No. 78-4.

Therefore, it is our opinion that the Haysville City Council is obliged to entertain an appeal from an aggrieved city employee who has satisfied all preliminary requirements thereto in the grievance procedure prescribed in Section V of the Employees' Handbook, pursuant to its amendment by Resolution No. 78-4.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:gk