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April 20, 1979

ATTORNEY GENERAL OPINION No. 79- 68

Frederick K. Cross
Suite 305, GFC Building
4550 West 51st St.
Roeland Park, Kansas 66205

Re: Cities of the Second Class -- Elective and Appointive
Officers -- Police Officers

Synopsis: In accordance with K.S.A. 14-201, policemen in cities of the second class are "officers" as opposed to "employees" of such cities, and they hold their offices for a term of one year and until their successors are appointed and qualified.

In the absence of specific statutory procedures for the removal of officers appointed pursuant to said statute, ouster proceedings (K.S.A. 60-1205 et seq.) must be utilized for the removal of any such officer prior to the expiration of his or her term of office.

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Dear Mr. Cross:

As city attorney for Roeland Park, you have inquired whether police officers appointed pursuant to K.S.A. 14-201 are "officers" within the meaning of that statute or merely employees of the city. Attorney General Opinion No. 74-146 addressed this question, concluding that

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policemen "fall into that class of 'officers' who must be appointed or reappointed and confirmed by the council." Attorney General Opinion No. 77-198 also recognized the power of the mayor, by and with the consent of the council, to appoint police officers. We concur with the propositions expressed in those opinions and conclude that, pursuant to K.S.A. 14-201, policemen in cities of the second class are officers, as opposed to employees, of such city.

You also inquire whether either the Mayor or the council has the power to remove a police officer appointed under K.S.A. 14-201 before the expiration of the one-year term provided therein. K.S.A. 14-301 enumerates the powers and duties of the mayor, and 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 . . . are complied with." K.S.A. 14-307 further defines the mayor's duties in this regard: "The mayor shall be active and vigilant in enforcing all laws and ordinances for the government of the city, and the mayor shall cause all subordinate officers to be dealt with promptly for any neglect or violation of duty. . . ."

These statutes grant the mayor broad supervisory powers, but in our opinion such powers do not include the authority to terminate an officer's appointment made under K.S.A. 14-201. Nor do the statutes authorize the city council to remove an officer appointed under K.S.A. 14-201. Until its repeal in 1973 (L. 1973, ch. 61, §12-4702), K.S.A. 14-822 provided a specific procedure for the removal of police officers for misconduct of the sort described in the statute. Since repeal of this statute, however, the legislature has provided no specific substitute for the procedures outlined therein. Therefore, since the legislature has provided no specific procedures for removal of officers appointed pursuant to K.S.A. 14-201, the provisions of K.S.A. 60-1205 et seq. must be used to remove such officers. K.S.A. 60-1205 provides:

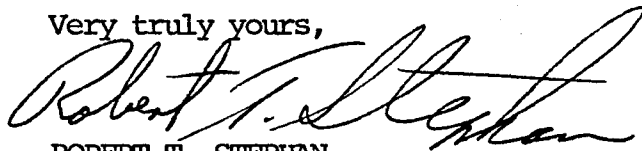
"Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, except those subject to removal from office only by impeachment, who shall (1) willfully misconduct himself or herself in office, (2) willfully neglect to perform a duty enjoined upon him or her by law, or (3) who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit his or her office and shall be ousted from such office in the manner hereinafter provided."

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K.S.A. 60-1206 sets out the procedures for ouster, providing that either the attorney general or the county attorney may, if reasonable cause is present, institute proceedings to oust such officers.

Thus, it is our opinion, that officers appointed and confirmed under K.S.A. 14-201 shall hold their offices for a term of one year and until their successors are appointed and qualified, unless removed prior to that time pursuant to K.S.A. 60-1205 et seq.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



W. Robert Alderson
First Deputy Attorney General

RTS:WRA:may