



STATE OF KANSAS

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ATTORNEY GENERAL OPINION NO. 81-219

Mr. Jerry L. Harrison
Beloit City Attorney
Beloit City Hall
117-123 North
Beloit, Kansas 67420

Re: Cities of the Second Class--Elections--Elective
and Appointive Officers; Terms

Synopsis: A city of the second class may not provide for the term of office of any city officer by means of an "employment" contract with such officer, and in light of the provisions of K.S.A. 14-201, a second class city may not provide for a two-year term of office for any of its officers, except pursuant to a charter ordinance. Cited herein: K.S.A. 14-201; Kans. Const., Art. 12, §5.

* * *

Dear Mr. Harrison:

You request our opinion as to whether the city of Beloit (a city of the second class) may, in the absence of a charter ordinance authorizing the same, enter into a two-year employment contract with the City Administrator. The office of City Administrator was created by two separate non-charter ordinances, which ordinances are attached hereto for reference.

K.S.A. 14-201 concerns the appointment of officers in cities of the second class, and provides, in part, as follows:

"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 deem necessary. Officers so appointed and confirmed shall hold their offices for a term of one (1) year and until their successors are appointed and qualified. The council shall by ordinance specify their duties and compensation, and by ordinance may abolish any office created by them whenever they may deem it expedient." (Emphasis added.)

In accordance with the above-quoted statutory excerpt, the tenure of appointed city officers in cities of the second class is one year, in the absence of a legally adopted charter ordinance providing otherwise. We have previously opined, in relation to a similar statute, that a contract which attempts to prescribe a differing tenure for a city officer is ineffectual. See Kansas Attorney General Opinion No. 80-240 (copy attached).

It is clear that, unless the Beloit City Administrator is an employee rather than an officer, the tenure prescribed by K.S.A. 14-201 must govern, and a two-year employment contract is invalid. In relation to the difference between "officers" and "employees," McQuillin, a recognized authority on the law of municipal corporations, states the distinction thus:

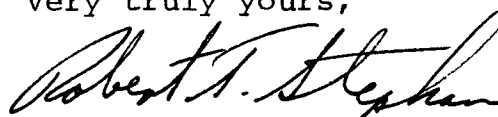
"The essential characteristics which differentiate a public office from mere employment are said to be: (1) An authority conferred by law, (2) the power to exercise some portion of the sovereign functions of government, and (3) permanency and continuity. In every definition given of the word 'office,' the features recognized as characteristic, and distinguishing it from a mere employment, are the manner of appointment and the nature of the duties to be performed--whether the duties are such as pertain to the particular official designation and are continuing and permanent and not occasional or temporary." 3 McQuillin, Municipal Corporations, §12.30.
(Footnotes omitted.)

Mr. Jerry L. Harrison
Page Three

Our examination of the two ordinances whereby the office of Beloit City Administrator was established, particularly the latest in time (Ordinance No. 1472), reveals that the City Administrator is clearly an "officer." Therefore, in our opinion, such officer, must, in accordance with K.S.A. 14-201, be appointed for a one-year term, and any provision of a contract attempting to prescribe a two-year term of employment is invalid and ineffectual.

In reaching the above conclusion, it should be recognized that, under article 12, section 5 of the Kansas Constitution, Kansas cities are empowered to "determine their local affairs and government," subject to certain limitations, including enactments of the legislature applicable uniformly to all cities. The manner of selection and appointment of city officers and employees is essentially a matter of local concern and government. K.S.A. 14-201 is not applicable uniformly to all cities, but only to cities of the second class. Thus, there would be no constitutional objection to the adoption of a charter ordinance exempting the city of Beloit from K.S.A. 14-201 and providing substitute provisions in lieu thereof. However, as the duties of a public officer do not arise out of contract or depend for their duration upon the terms of a contract, 63 Am.Jur.2d Public Officers and Employees §1, the tenure of the City Administrator, as well as that of any other appointive city officer, should be prescribed by charter ordinance rather than by contract. Additionally, in the absence of any charter ordinance, a city of the second class must adhere to the provisions of K.S.A. 14-201.

Very truly yours,



ROBERT T. STEPHAN
Attorney General of Kansas



Terrence R. Hearshman
Assistant Attorney General

RTS:BJS:TRH:jm
Attachment