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ATTORNEY GENERAL OPINION NO. 87- 115

D. Randall Heilman
Council Grove City Attorney
P.O. Box 212
Council Grove, Kansas 66846-0212

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

Synopsis: Under the provisions of K.S.A. 14-201, officers appointed and confirmed in the cities of the second class hold their offices for a term of one year and until their successors are appointed and qualified. A city governing body may not vary the one year term of office prescribed thereby (except by adoption of a valid charter ordinance), and an appointment of a chief of police for a six-month probationary period is valid for the full statutory period (one year) prescribed by K.S.A. 14-201. Cited herein: K.S.A. 14-201; 14-308.

* * *

Dear Mr. Heilman:

You request our opinion concerning appointment of a chief of police by the city of Council Grove. You have provided the following information regarding the subject appointment:

"BACKGROUND: As a result of the resignation of the acting chief of police, the City Council of the City of Council Grove during its regular meeting on February 16, 1987, appointed a new chief of police. A copy of the pertinent portion of the Minutes of that City Council Meeting are attached hereto and marked as Exhibit No. 1. As can be seen from the Exhibit, the

president of the City Council, acting in the absence of the Mayor, made a temporary appointment of a chief of police 'to be on a six month probation period'. This appointment was approved by a motion, second and unanimous vote.

"In April of 1987, the Mayor which [sic] was absent from the February 16, 1987, meeting did not run for re-election. As a result of this, a new Mayor was elected and at the time of his election, he did not make any appointments regarding the chief of police because of the six month probation period.

"It appears that when the six month probation period ends, the majority of the Council will want to retain the chief of police. However, it appears that the Mayor will not want to retain the chief of police."

Your question is whether the chief of police would be considered "appointed and confirmed" and continue to hold his office in the event that the mayor would fail to appoint him chief of police at the termination of his "probationary period."

K.S.A. 14-201 relates to appointment of city officers in cities of the second class, and provides, in pertinent 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 police officers and any other officers deemed necessary. Any officers appointed and confirmed shall hold their offices for a term of one year and until their successors are appointed and qualified."
(Emphasis added.)

As present statutes applying to cities of the second class do not provide for filling of vacancies in appointive offices for unexpired terms, the one year term of office prescribed by the above quoted statute applies at whatever time an officer is appointed, and the fact that an officer resigns before the expiration of his term does not shorten the term of the next incumbent. State ex rel. v. Wentworth, 55 Kan. 298, 304 (1895). Accordingly, upon resignation of the acting chief of police in Council Grove, the governing body was required under

K.S.A. 14-201 to appoint a new chief of police for a term of one year.

Regarding the authority of the council president to appoint a chief of police, K.S.A. 14-308 prescribes that in the case of temporary absence of the mayor, "the president of the council for the time being shall exercise the office of mayor, with all the rights, privileges and jurisdiction of the mayor." Although the statute does not specifically so provide, it is our opinion that the president of the council may, in the temporary absence of the mayor, make an appointment under K.S.A. 14-201. See 3 McQuillin, Municipal Corporations (3rd Ed.) §12.73.

In accordance with the above, the president of the council had authority to appoint a chief of police for a term of one year, and the council had authority to confirm such an appointment at the February 16, 1987, meeting of the governing body. However, there is no authority for a six-month probationary appointment under K.S.A. 14-201. The effect of such appointment was considered in Hale v. Bischoff, 53 Kan. 301, 306 (1894), wherein the court stated as follows:

"The rule is, that where, by the correct construction of a city charter, the term of a city officer is fixed at two years, and a person is appointed to the office for one year only, the appointment is valid for the full statutory period."

In accordance with the rule laid down in the Bischoff case, it is our opinion that the chief of police appointed at the February 16, 1987, meeting of the governing body holds his office for a term of one year from that date.

In summary, it is our opinion that under the provisions of K.S.A. 14-201, officers appointed and confirmed in the cities of the second class hold their offices for a term of one year and until their successors are appointed and qualified. A city governing body may not vary the one year term of office prescribed thereby (except by adoption of a valid charter ordinance), and an appointment of a chief of police for a

six-month probationary period is valid for the full
statutory period (one year) prescribed by K.S.A. 14-201.

Very truly yours,



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