



STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

November 16, 1976

ATTORNEY GENERAL OPINION NO. 76-346

Mr. Mickey Carl Moorman
City Attorney of Chetopa
330 Maple
Post Office Box 327
Chetopa, Kansas 67336

Re: Cities--Officers--Resignation

Synopsis: In order to be effective, a resignation from public office must be made with the intention of relinquishing the office, and it is not effective until it has been accepted by the proper authorities, or until they have done some act equivalent to acceptance. Acceptance is not necessary, however, to effectuate a resignation from a position of employment, as distinguished from an office.

* * *

Dear Mr. Moorman:

You inquire concerning the effect of an oral resignation.

The question arises, you indicate, from a meeting of the city council on August 5, 1975, at which time a city employee who attended the meeting asked to be allowed to work for the street committee rather than working under the direction and control of the mayor. The request was denied as improper and impermissible, whereupon the employee threw the keys of a city vehicle on the council table, and announced that he was resigning effective August 11, 1975, stating that he had obtained employment with the Kansas Department of Transportation effective August 11, 1975. The council discussed the matter, and decided to table the resignation because it was not in written form. On August

Mr. Mickey Carl Moorman
Page Two
November 16, 1976

19, 1975, the employee was reinstated as a city employee by motion of the council, based on the assumption that the resignation was not effective because it was in oral form, and because the council had not accepted it by motion.

At 63 Am.Jur.2d, *Public Officers and Employees*, § 161, the writer states thus:

"A resignation of a public officer need not be in any particular form, unless some form is prescribed by statute. Ordinarily, *it may be either in writing or by parol*. The conduct of an employee may properly be regarded as constituting a resignation from the position held by him."
[Footnotes omitted.] [Emphasis supplied.]

There being no statute which prescribed a written form of resignation, the fact that the resignation was tendered verbally does not render it inoperative for that reason.

Secondly, the council based reinstatement, you indicate, on the fact that the resignation had not been accepted by motion. The general rule in Kansas is that a resignation from public office is not effective until it is accepted. *See State v. Clayton*, 27 Kan. 442 (1881). In *State ex rel. Hopkins v. Board of Education of the City of Council Grove*, 108 Kan. 101, 193 P. 1074 (1920), the rule was stated thus:

"Under the common-law theory, and the one which has been adopted in this state, the duties and responsibilities of a public officer cannot be laid down at his will or pleasure. There must be a resignation with the intention of relinquishing the office, and it is not then effective until it has been accepted by the proper authorities or they have done something that is equivalent to an acceptance." 108 Kan. at 103.

Thus, an acceptance is necessary to effectuate a resignation from public office. A formal act of acceptance is not necessary, however, for acceptance may be inferred from the facts of those to whom it is offered. *State ex rel. Dawson v. Meek*, 86 Kan. 576 (1912).

Mr. Mickey Carl Moorman
Page Three
November 16, 1976

The necessity of an acceptance to effectuate a resignation is based upon the nature of public office. In *State ex rel. Topeka v. Clayton*, 27 Kan. 442 (1881), the court summarized the reason for the rule thus:

"[I]t is contended by the defendant that acceptance, or something equivalent thereto, is necessary to perfect a resignation; that a party who has once accepted an office and entered upon its duties has not the absolute right at his own pleasure to abandon its duties and resign the office; that the public are interested as well as the individual incumbent; and that as acceptance or its equivalent is necessary to perfect a resignation, when the acceptance specifies the time at which it will take effect, until such time the resignation is not complete. The law as stated by the defendant is correct. The public have the right to command the services of any citizen in any official position which they may designate; and he may not, after entering upon the duties of the position, abandon them at his option." 27 Kan. at 444.

The court rejected the view that an office-holder has an absolute right to resign from office, and that a resignation is complete without acceptance.

These rules apply in the instance of a public office. If the person involved here was indeed a public officer, acceptance was necessary to render the resignation effective. However, if he was a city employee, and not an officer of the city, there appears to be no legal authority for requiring an acceptance in order to render the resignation effective, for it was effective when made verbally, if made with the intent thereby to resign effective on the date stated.

Thus, the verbal resignation was not ineffective merely because it was not also tendered in written form. In addition, no acceptance was or is required to render the resignation of a public employee effective, although acceptance is necessary to perfect the resignation of a public officer. On the basis of your letter, I infer that the person involved was indeed a city employee, and

Mr. Mickey Carl Moorman
Page Four
November 16, 1976

that therefor, no acceptance was necessary. In that event, the resignation was effective on August 11, 1975.

Yours very truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj