

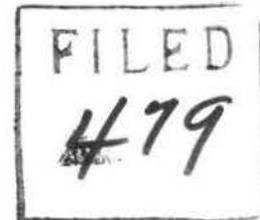
CITIES, TOWNS AND
VILLAGES:
CITY ADMINISTRATOR:

A city administrator appointed under the provisions of Section 77.042 to Section 77.048, RSMo 1969, may be authorized by the governing body of

a third class city to appoint and discharge any employees of the city even though such employees operate under the Park Boards, the Public Work Boards or the police merit system. The city council of a third class city does not have authority to give the city administrator general superintending control of the administration and management of the departments under the control of the various boards such as the Park Board or the Board of Public Works or to give the city administrator any control beyond that heretofore exercised by the mayor himself.

OPINION NO. 479

December 10, 1970



Honorable James I. Spainhower
State Representative
117th District
State Capitol Building
Jefferson City, Missouri 65101

Dear Representative Spainhower:

This letter is in response to your opinion request in which you ask the following questions:

"(1) Can a City Administrator employed by a 3rd class city under this Act be placed in charge of the employees, including their hiring and firing, who serve under Park boards, Public Works boards, and Police Personnel Merit System boards when said boards have been established according to the proper statutory provisions?

"(2) Does the City Council of a 3rd class city have the authority, under this Act, to give the City Administrator general superintending control of the administration and management of the departments under the con-

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trol of the various boards and may said City Council provide that any order of the Administrator would take precedence over a directive of the appropriate board?"

We understand that the boards inquired about in your question are those boards created under Sections 90.500, RSMo 1969 et seq. (Park Board), Section 91.450, RSMo 1969 et seq. (Board of Public Works), and Section 85.541, RSMo 1969 (Personnel Board).

Sections 77.042 to 77.048, RSMo 1969 (House Bill No. 284 of the Seventy-fifth General Assembly), to which you refer provides:

77.042 "The governing body of any city of the third class, except those organized under the provisions of sections 78.430 to 78.640, RSMo, and any fourth class city may by ordinance provide for the employment by the governing body with the approval of the mayor of a city administrator who shall be the chief administrative assistant to the mayor and who shall have general superintending control of the administration and management of the government business, officers and employees of the city, subject to the direction and supervision of the mayor."

77.044. "1. The governing body shall provide, as minimum qualifications, that the city administrator be at least twenty-one years of age, a resident of the city while serving as city administrator, and that he devote his full time to the performance of the duties of his office. The governing body may also require that the city administrator meet other personal qualifications.

"2. The city administrator shall receive a salary as set by ordinance, and shall serve at the pleasure of the appointing authority."

77.046. "Upon the adoption of a city administrator form of government, the governing body of the city may provide that all other officers and employees of the city, except elected officers, shall be appointed and dis-

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charged by the city administrator, but the governing body may make reasonable rules and regulations governing the same."

77.048. "Except as provided in sections 77.042 to 77.048, the mayor and city council of any third class city and the mayor and board of aldermen of any fourth class city which adopts the city administrator form of government shall retain all the powers given to it by the laws applying to the city before the city administrator form of government was adopted, and all laws governing the city under its prior form of government and not inconsistent with the provisions of sections 77.042 to 77.048 shall apply to and govern the city after it adopts this form of government. All bylaws, ordinances, and resolutions lawfully passed and in force at the time the city administrator form of government is adopted shall remain in force until repealed or altered by the council or board of aldermen."

In resolving this question we of course have to consider the applicable rules of statutory construction. It is clear that general and special statutes should be read together and harmonized if possible and the general rule is also that to the extent of any repugnancy the special statute will prevail State ex rel. American Central Ins. Co. v. Gehner, 280 S.W. 416 (Mo. 1926). Where the special statute is enacted later it will be regarded as an exception to, or qualification of a prior general one, and where the general act is later, the special act will be construed as remaining an exception to its terms; unless it is repealed in express words or by necessary implication. Dalton v. Fabius River Drainage Dist., 219 S.W.2d 289 (Mo.App. 1949).

With these basic rules in mind and proceeding upon the general premise that conflicting statutes must be harmonized to such an extent as is possible we will proceed to answer your questions.

Section 77.046 clearly authorizes the governing body of the city to provide that all other officers and employees of the city, except elected officers, shall be appointed and discharged by the city administrator, but, that the governing body may make reasonable rules and regulations governing the same. Section 77.048 provides that all laws governing the city under its prior form of government and not inconsistent with the provisions of Section

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77.042 to Section 77.048 shall apply and govern the city after the adoption of the city administrator form of government. The provisions with respect to the Park Board, particularly Section 90.550, RSMo 1969, authorizes the Park Board to appoint a suitable person to take care of said parks and necessary assistants and to fix their compensation and gives the board the power to remove such appointees. Under Section 91.500, RSMo 1969, the Board of Public Works has the power to appoint a chief superintendent and such subordinates including engineers, inspectors and other persons whose compensation shall be provided by ordinance. Likewise under the statutes relating to the police merit system, Section 85.541 provides for a personnel board composed of members of the largest and second largest political parties in equal numbers who are required to give examinations to candidates for appointments and to certify the list of eligibles to the mayor or other appointing authority and, the mayor or other appointing authority is required to hire or promote from a list of eligibles so certified.

First of all with respect to the powers of the city administrator when appointed under Section 77.042, et seq, it is our view that the city administrator does not obtain any greater powers or control of the administration and management of the government business, officers and employees of the city than that exercised by the mayor himself. That is, at first glance a literal reading of the authority given to the administrator might lead one to conclude that he has in fact complete control of all government business. This however, in our view, would be an absurd result and certainly not one intended by the legislature. The administrator is the administrative assistant of and subject to the direction and supervision of the mayor, as expressly provided by Section 77.042 and can exercise no power greater than that exercised by the mayor. It is our view that the "superintending control" given the city administrator subject to the direction and supervision of the mayor by Section 77.042 is the same as the "superintending control" given the mayor of a third class city not under an optional form in Section 77.250, RSMo 1969. In this respect then and in answer to your second question, it is our view that the city council cannot authorize and that these statutes do not authorize the city administrator to exercise control over the Park Board, the Board of Public Works or the Personnel Board. With respect to the hiring and firing of personnel, we note that the statute, Section 77.046 expressly provides that the governing body of the city "may provide that all other officers and employees of the city, except elected officers, shall be appointed and discharged by the city administrator, but the governing body may make reasonable rules and regulations

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governing the same." Clearly then the city administrator may be authorized by the governing body to make appointments and discharges of city personnel, except elected officers, but whether or not he is given such authority is of course up to the "governing body."

In this respect then the governing body may authorize the city administrator to make appointments heretofore made by the Park Board or by the Board of Public Works and may also provide that the city administrator have authority to discharge such employees.

Insofar as the merit system personnel board is concerned, Section 85.541, it is our view that as we have indicated, the authority of the city administrator may be limited by reasonable rules and regulations with respect to the appointment or discharge of such merit system personnel and it is not required that he perform any function heretofore performed by any individual or group under Section 85.541. The statutory authority giving the city administrator the general superintending control of the administration of the city government does not require that he replace the personnel board. Unless the ordinance adopting the provisions of Section 85.541 is repealed such personnel board would continue to exercise its powers as therein provided. While it is true that the city administrator may be authorized by the governing body to make all appointments and discharges, nevertheless, we reiterate the governing body is not required to give him this authority and may if it wishes give him only the authority which was previously given to the mayor or "other appointing authority" under that section; that is, to appoint or promote from a list of eligibles certified, or to suspend, demote or discharge subject to a public hearing before the personnel board. The governing body may, if it wishes, refuse to give the city administrator any authority whatsoever with respect to appointments and discharges within the police merit system, and may refuse to give the city administrator the authority to appoint or discharge any employees or any group of employees within any division of the city government.

CONCLUSION

It is the opinion of this office that a city administrator appointed under the provisions of Section 77.042 to Section 77.048, RSMo 1969, may be authorized by the governing body of a third class city to appoint and discharge any employees of the city even though

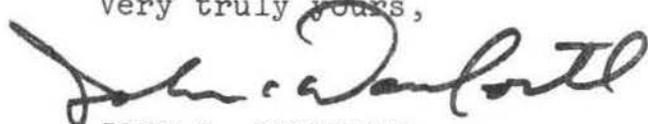
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such employees operate under the Park Boards, the Public Work Boards or the police merit system.

The city council of a third class city does not have authority to give the city administrator general superintending control of the administration and management of the departments under the control of the various boards such as the Park Board or the Board of Public Works or to give the city administrator any control beyond that heretofore exercised by the mayor himself.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, John C. Klaffenbach.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General