

CITY OFFICERS: A member of the board of trustees of
CITY HOSPITALS: a city hospital of a third class city
CITIES, TOWNS & VILLAGES: established pursuant to the provisions
of Sections 96.150, RSMo et seq., may
be removed under the procedures provided by Section 77.340, RSMo.
Such trustees being city officers within the meaning of Section 77.
400, RSMo, are within the conflict of interest provisions of Sec-
tion 77.470, RSMo.

OPINION NO. 136

March 6, 1974

Honorable E. Thomas Coleman
Representative, District 21
Room 100B, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Coleman:

This opinion is in response to your question asking:

"1. May members of the Board of Trustees of a city hospital established pursuant to the provisions of Sections 96.150 to 96.220 RSMo be removed under the provisions of Section 77.340 RSMo?

"2. If it is your opinion that such Hospital Board members cannot be removed as stated in question No. 1, could they be removed from office under the provisions of Sections 106.220 to 106.300 RSMo? If your opinion is in the affirmative, what grounds could be the basis for their removal under Sections 106.220 to 106.300 RSMo?"

Section 77.340, RSMo, with respect to the removal of city officers of third class cities provides:

"The mayor may, with the consent of a majority of all the members elected to the city council, remove from office, for cause shown, any elective officer of the city, such officer being first given opportunity, together with his witnesses, to be heard before the council, sitting as a court of impeachment. Any elective officer may, in like manner, for cause shown, be removed from office by a two-thirds

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vote of all the members elected to the city council, independently of the mayor's approval or recommendation. The mayor may, with the consent of a majority of all the members elected to the council, remove from office any appointive officer of the city at will; and any such appointive officer may be so removed by a two-thirds vote of all the members elected to the council, independently of the mayor's approval or recommendation. The council may pass ordinances regulating the manner of impeachment and removals."

Section 77.400, RSMo, provides:

"The term 'officer,' whenever used in this chapter, shall include any person holding any situation under the city government or any of its departments, with an annual salary, or for a definite term of office."

Trustees of such a city hospital of a third class city are appointed under the provisions of Section 96.160, RSMo, by the mayor of such city with the approval of the council, chosen from the citizens of such city and with reference to their fitness. Under such section the trustees serve without compensation. Under Section 96.170, RSMo, the trustees serve for a specific term.

The sections respecting such trustees contain no express provisions for their removal. However, we believe that such trustees are within the term "officer" as construed by Section 77.400 in that they are persons ". . . holding any situation under the city government . . . for a definite term of office." Within the context of Sections 96.150, RSMo et seq., respecting such hospital trustees in third class cities, it is difficult to avoid the conclusion that the trustees hold a situation within the city government even though such trustees are autonomous to some extent in the operation of the hospital.

In view of this conclusion, we find it necessary to withdraw our Opinion No. 244 dated June 12, 1969, to Broomfield in which, referring to the same hospital board of trustees, we held that such a trustee was not a city officer under Section 77.470, the conflict of interest section relating to officers of third class cities, and was not disqualified from doing business with the city in areas totally unrelated to the operation of the hospital. We are thus of the view that Opinion No. 244, 1969, was incorrect and that a member of the board of trustees of such a hospital is

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such a city officer within the purview of Section 77.400 and within the prohibition of Section 77.470, RSMo, respecting conflict of interests. We do not believe, however, that prosecution of any person relying upon said opinion would be reasonable. Whatever inequities may exist in the application of Section 77.470 to such trustees is a matter for the concern of the General Assembly.

CONCLUSION

It is the opinion of this office that a member of the board of trustees of a city hospital of a third class city established pursuant to the provisions of Sections 96.150, RSMo et seq., may be removed under the procedures provided by Section 77.340, RSMo. Such trustees being city officers within the meaning of Section 77.400, RSMo, are within the conflict of interest provisions of Section 77.470, RSMo.

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

Yours very truly,



JOHN C. DANFORTH
Attorney General