

September 3, 1974

OPINION LETTER NO. 238
Answer by letter-Klaffenbach

Honorable Frank Bild
State Senator, District 15
7 Meppen Court
St. Louis, Missouri 63128



Dear Senator Bild:

This letter is in response to your question asking:

"Does the Board of Aldermen of a City of the Fourth Class have the power and authority to pass an ordinance restricting the number of terms which an individual may be elected as Mayor, as Alderman, or elected as any other City official of a Fourth Class City?"

Section 79.250, RSMo, with respect to city officers provides:

"All officers elected or appointed to offices under the city government shall be qualified voters under the laws and constitution of this state and the ordinances of the city except that appointed police officers, the city attorney, and other employees having only ministerial duties need not be registered voters of the city. No person shall be elected or appointed to any office who shall at the time be in arrears for any unpaid city taxes, or forfeiture or defalcation in office. All officers, except appointed police offices, the city attorney, and other employees having only ministerial duties, shall be residents of the city."

Neither this section nor the Missouri Constitution prohibit city officers from being elected to more than one term. Further,

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there is no such prohibition in Section 79.050, RSMo, which provides for the terms of elective officers of fourth class cities.

Likewise, there is no statutory or constitutional provision which expressly authorizes ordinances restricting such terms of office. Therefore, the question is whether such an ordinance would be repugnant to state law.

In Ervin v. Collins, 85 So.2d 852, 858 (Fla. Banc 1956), the Supreme Court of Florida held:

" . . . It is the sovereign right of the people to select their own officers and the rule is against imposing disqualifications to run. The lexicon of democracy condemns all attempts to restrict one's right to run for office. . . . Florida is committed to the general rule in this country that the right to hold office is a valuable one and should not be abridged except for unusual reason or by plain provision of law. . . ."

It is our view that the legislature has provided for the qualifications and terms of such officers and in so doing, has clearly declined to impose such limitations. Since the legislature has undertaken to express the legislative will with respect to the subject, any such limitations imposed on the office or on the electorate by ordinance would be repugnant to state law and invalid. (Cf. Morley v. Ryan, 461 S.W.2d 7 (Mo. 1970)).

We have no state legislative proposal before us and, therefore, do not rule on any question respecting the validity of action by the General Assembly on this subject.

Very truly yours,

JOHN C. DANFORTH
Attorney General