

OFFICERS:
CITY MARSHAL:
CHIEF OF POLICE:
FOURTH-CLASS CITIES:
CITIES, TOWNS and VILLAGES:

In a fourth class city the office of elected marshal is abolished when a chief of police is appointed, the appointment being authorized by ordinance enacted pursuant to a vote of the people under provisions of Section 79.050, RSMo.

April 22, 1964

FILED
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Honorable Daniel V. O'Brien
Prosecuting Attorney
St. Louis County
214 Manchester Road
Ballwin, Missouri

Dear Mr. O'Brien:

This is in response to your request of March 25th for an opinion. Your request enclosed a letter from the Honorable Walter H. Smith, Mayor of Ballwin, Missouri.

Two questions were posed: The City of Ballwin, a city of the fourth class, has a city marshal, who was elected under Section 79.050, RSMo 1959, as amended in 1961 (Cum. Supp. 1963). This statute, relating to elective officers for cities of the fourth class, in relevant parts provides:

"The following officers shall be elected by the qualified voters of the city, and shall hold office for the term of two years and until their successors are elected and qualified, to wit: Mayor and board of aldermen. The board of aldermen may provide by ordinance, after the approval of a majority of the voters voting at an election at which the issue is submitted, * * * for the appointment of a chief of police, who shall perform all duties required of the marshal by law, and any other police officers found by the board of aldermen to be necessary for the good government of the city. If the board of aldermen does not provide for the appointment of a chief of police * * * as provided by this section, a city marshal * * * shall be elected, and the board of aldermen may provide by ordinance that the same person may be elected marshal and collector, at the same election, and hold both offices * * *."

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It is our understanding that the proposition providing for the appointment of a chief of police has been approved by the voters in a recent election. The present city marshal was elected in April 1963 for a term which expires in April 1965.

The question is--When a chief of police is appointed, is the elected office of marshal abolished immediately or does the incumbent marshal serve out the remainder of the term to which he was elected?

To resolve your question we must first determine whether power exists to shorten the term of an elected officer, and second, whether that has been done under the present circumstances.

The statute provides for an elected marshal in the event the chief of police is not appointed, their duties being identical, it is not contemplated that the city have both.

Under the terms of the statute, the board of aldermen may pass an ordinance providing for a chief of police, this after proper approval by the voters. The law is universal that the Legislature, having provided for the election of a city marshal, may also provide for his removal during his term of office and provide for his being supplanted in this case by the appointment of a chief of police.

The Legislature passed Section 79.050 and thus created the office of marshal as an elective office. The right and power of the Legislature to do so cannot be doubted. Can the Legislature, then abolish the office during an elected officers' term. The authorities are settled that it can.

The case of State v. Hedrick, Mo. Sup., 241 S.W. 2d 402, l.c. 418, holds:

"It is also held in several decisions that if the Legislature is empowered to create an office, it may provide for removal from that office as it wills.
* * *"

In Lanza v. Wagner (N.Y.), 183 N.E. 2d 670, the Legislature passed a law, reorganizing the school board and

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providing for the establishment of another board, which act in effect removed the incumbent board members before the expiration of their term. It was claimed that to shorten the term or to abolish the office was an invasion of the board members' constitutional rights. The court held at l.c. 673:

"We may quickly dispose of the attack upon the statute on the score of its having shortened the plaintiffs' terms of office. The office held by each of the plaintiffs was concededly created by the Legislature, not by the Constitution, and there is no constitutional inhibition against the mere shortening of the term of an existing statutory office by legislation aimed at the office rather than at its incumbent. * * * (Omitting cases cited.) * * * Public offices are created for the benefit of the public, and not granted for the benefit of the incumbent, and the office holder has no contractual, vested or property right in the office. (Long v. Mayor of City of N. Y., 81 N.Y. 425, 427-428, supra.) Absent any express constitutional limitation, the Legislature has full and unquestionable power to abolish an office of its creation or to modify its term, or other incidents attending it, in the public interest, even though the effect may be to curtail an incumbent's unexpired term. * * *"

In Long v. Mayor, etc., of City of New York, 81 N.Y.R. 425, the plaintiff was elected an alderman for a two-year term. He served only five months being superseded by another alderman elected under a law passed by the State Legislature which took effect immediately. Here the court said, l.c. 427:

" * * * It is claimed that the act in question shortens the duration of the plaintiff's term of office, so that the term declared by statute, in force when

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he was elected, to be for 'two years,' is made, by the act of 1870, a term for five months. We see no legal objection thereto. The office was not created by, or regulated in any manner by, the Constitution. The legislature had entire control over the matter. The office was created, its term was fixed by that body, and it could be changed by it. * * *

In 67 C.J.S., "Officers," Section 10, it is stated:

"The governmental authority which possesses the power to create an office has, in the absence of some provision of law passed by a higher authority, the implied power to abolish such office, or to consolidate two or more offices which it has created. Thus, in the absence of constitutional restriction, an office created by the legislature can be abolished by it. * * *

In Perkins v. Board of Commissioners (Ill.), 111 N.E. 580, l.c. 585, the court said:

"The law is now well settled in this State that, when the Legislature creates an office, such office is wholly within the power of the Legislature creating it, and it may prescribe the powers and duties of the incumbent of such office and the manner of filling the office, and may, from time to time, change the manner or mode by which such office shall be filled."

42 Am. Jur. 904, "Officers":

"The power to create an office generally includes the power to modify or abolish it. * * * where the office is of legislative creation, the legislature may, unless prohibited by the Constitution, control, modify, or abolish it whenever such course

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may seem necessary, expedient or conducive to the public good. The power extends to the consolidation of offices, resulting in abolishing one and attaching its powers and duties to another."

It has also been held that an officer appointed or elected for a specific term may be supplanted during that term as there is no breach of a contractual relationship. In *Dodge v. Board of Education*, 302 U.S. 74, 82 L. Ed. 57, it was held that an act of the State Legislature fixing the term or tenure of a public officer creates no contractual obligation which may be impaired by subsequent legislation.

The Legislature having power to abolish an office that it has created, certainly has power to designate how a transfer of the duties of that office can be accomplished.

The Legislature, having created an office, has the power to abolish it. The implementation used is immaterial. In Section 79.050 the Legislature has expressly empowered the city council with the approval of the voters, to substitute the office of an appointed chief of police for that of an elected marshal.

We can find no constitutional restriction against this procedure, and consequently, we hold that the office of marshal is abolished upon the appointment of a chief of police who may take office immediately.

CONCLUSION

Section 79.050, RSMo 1959, as amended in 1961 relating to elective officers in cities of the fourth class, authorizes a proposition to be submitted to the voters providing for the appointment of a chief of police and upon approval of the proposition, the board of aldermen may provide by ordinance for the appointment of a chief of police.

The chief of police, upon appointment, may take office

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immediately, and then the office of marshal ceases to exist, even though the term to which the marshal was elected has not expired.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, O. Hampton Stevens.

Yours very truly,


THOMAS F. EAGLETON
Attorney General