

July 22, 1964



Honorable Daniel V. O'Brien
Prosecuting Attorney
St. Louis County
Courthouse
Clayton, Missouri--63105

Dear Mr. O'Brien:

In your letter of April 13, 1964, you ask for our opinion regarding the validity of an ordinance passed by the Board of Aldermen of the City of Vinita Park, a city of the fourth class.

In a subsequent letter of June 18, 1964, from Robert R. Schwarz, Attorney for the City, he advises us that the city became a city of the fourth class in 1950, that no chief of police was appointed and a marshal was elected. The present marshal has been continuously returned to office since.

The question you propound is, "Does the ordinance encroach on the power of the marshal and is the ordinance therefore void?"

The ordinance in question dated April 13, 1964, passed by the board of aldermen provides:

(1) for the appointment of a "board of police commissioners" who shall "supervise the operation" of the police department; and

(2) the board of police commissioners shall adopt rules and regulations for the police department.

Section 79.050, RSMo. as amended in 1961 (Cum. Supp. 1963), provides that if no chief of police is appointed by the board of aldermen after approval by the electorate, then and in that event a city marshal will be elected. This was done in Vinita Park.

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In Opinion No. 149, to you under date of April 22, 1964, a very similar question was discussed and Section 79.050 was construed.

Nowhere in the statutes governing the police system in a city of the fourth class is there a direct statement setting forth exactly who is to supervise the office of marshal or chief of police. We find no authority for the appointment of a board of police commissioners for a city of the fourth class. In *State v. Smith*, 139 S.W. 2d 929, it was held that the board of aldermen in a fourth class city has only such powers as are conferred on it by statute.

Section 85.610, RSMo. 1959, provides that the marshal in cities of the fourth class shall be the chief of police.

Section 85.620, RSMo. 1959, provides that the number and the tenure of policemen is to be regulated by ordinance. It was the intention of the Legislature in our opinion to make the marshal the chief law enforcement officer of the city.

The indicated function of the board of police commissioners is to adopt "rules and regulations" and to "supervise the police department". It appears that by appointing a board of police commissioners, the board would take over the functions of the marshal who is also the chief of police.

This, we believe, to be contrary to the intent of the Legislature relating to the police system in fourth class cities.

Yours very truly,

THOMAS F. EAGLETON
Attorney General