

Opinion No. 146
Answered by Letter (Gardner)

August 1, 1967

Honorable Jewell Kennedy
State Representative, 17th District
6111 Harris
Raytown, Missouri



Dear Representative Kennedy:

Since writing to you on May 23, 1967, we have given consideration to questions raised in your letter of January 24, 1967, with respect to Bill No. 105, Ordinance No. 104, Section III, entitled Ordinance Establishing the Ward Boundaries of the City of Raytown, Missouri. A pertinent part of said ordinance states:

"That there hereby be established new ward boundaries in the City of Raytown, Missouri, effective April 2, 1968."

The questions raised in your letter are:

"If ward lines are redrawn in a city of the fourth class during the terms of incumbent aldermen, are the aldermen entitled to complete the two-year term of office for which they have been elected?"

"If your opinion on the first issue allows the aldermen to complete the term for which they were elected, is this result affected by the fact that the new ward lines place more than two aldermen in the same ward until the next election?"

The tenure of aldermen is governed by express statutory authority. Section 79.060, RSMo 1959:

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"The board of aldermen shall, by ordinance, divide the city into not less than two wards, and two aldermen shall be elected from each ward by the qualified voters thereof, at the first election for aldermen in cities adopting the provisions of this chapter. At such election for aldermen the person receiving the highest number of votes in each ward shall hold his office for two years, and the person receiving the next highest number of votes shall hold his office for one year; but thereafter each ward shall elect annually one alderman, who shall hold his office for two years."

It is apparent from this statute that the incumbent aldermen are entitled to complete the two-year term of office to which they have been elected if they meet the qualifications for aldermen during that period. Qualifications for aldermen are set forth in Section 79.070, as follows:

"No person shall be an alderman unless he be at least twenty-one years of age, a citizen of the United States, and an inhabitant and resident of the city for one year next preceding his election, and a resident of the ward from which he is elected. Whenever there shall be a tie in the election of aldermen, the matter shall be determined by the board of aldermen."

From this statutory requirement it appears that in the event an alderman who was elected from one of the present wards was to voluntarily change his residence to another ward of the city in which another alderman resides, then the former would become disqualified to represent the ward from which he was chosen and forfeits his right to the office. State ex rel Johnston v. Donworth, 127 MoApp. 377, 105 S.W. 1055. However a different situation is presented in your letter than that to which the section refers. From your letter we understand that a legally qualified alderman at the time of his election has not changed his residence, but through no fault of his own, his residence is now located in the same ward as that of another alderman because the ward lines have been withdrawn. The qualification

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provisions of the statute are very limited and do not cover situations of this kind unless it is the legislative intent that the expressed qualifications of aldermen are to be extended by implication to include the circumstances referred to in your letter.

In determining the intent of the legislature we find that the general rule as to how statutory qualifications of public officers are to be construed is given in C.J.S., Vol. 67, p. 126, § 11, Officers, as follows:

"Provisions in statutes and constitutions imposing qualifications should receive a liberal construction in favor of the right of the people to exercise freedom of choice in the selection of officers, and in favor of those seeking to hold office; and ambiguities should be resolved in favor of eligibility to office. It does not follow, however, that the courts should give words an unreasonable construction in order to uphold the right of one to hold office. Disqualifications provided by the legislature are construed strictly and will not be extended to cases not clearly within their scope, although it has been held that a statute making an officer ineligible for the same or a similar position for a specified time in case of his removal from office for specified causes should be liberally construed to effectuate its object.
* * * "

This rule has been approved in Missouri. State ex rel Mitchell v. Heath, 345 Mo. 226.

In accordance with this general rule, Section 79.070 must be strictly construed. If the lawmakers intended to include a provision which would disqualify an alderman when the ward lines are withdrawn as indicated in your letter, they surely would have done so. In the absence of such a statutory provision, Section 79.070 cannot by implication be construed to disqualify a duly elected alderman who did not move his residence but whose ward lines were changed around him.

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Therefore, the present aldermen may continue in office for the remainder of their terms.

This result is not affected by the fact that the new ward lines place more than two aldermen in the same ward until the next election. Section 79.030 provides for a general election for the elective officers of each city of the fourth class to be held on the first Tuesday in April next after the organization of such city, then every two years thereafter. The next election in Raytown will be on April 2, 1968. Since the ordinance becomes effective on election day, it appears that one alderman may be elected from each of the new wards on that day and the terms of the incumbent aldermen will expire one year thereafter. Inasmuch as they have not changed their residence, the incumbent aldermen are in a position to represent the people who elected them, notwithstanding the fact that as an incident of the organization of the city they, along with the people who elected them, are placed in new wards.

This office has held in opinions issued under date of May 23, 1966, to Bill D. Burlison (#137 - 1966) and February 19, 1960, to Roy W. McGhee, Jr., that changes in school district, township or county lines do not result in loss of office of members of the county boards of education who are required to reside in the district from which they were elected, when such changes place the residence of the members of the board of education in other districts. We are enclosing copies of such opinions.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

Enclosures: Opinions to
Bill D. Burlison, 5-23-66 (#137);
Roy W. McGhee, Jr., 2-19-60.