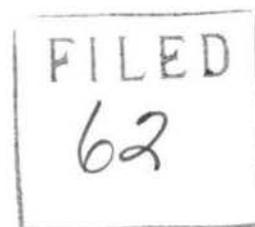


January 5, 1973

OPINION LETTER NO. 62
Answer by letter-Mansur



Honorable Frank Bild
State Senator, District 15
State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Bild:

This is in response to your request for an opinion from this office as follows:

- "1) Is the city clerk required to be a resident of the city?
- "2) Are non-elective officers or city employees of a 4th class city required to be residents of such a city?
- "3) If non-elective officers or office employees of a 4th class city are required to be residents of such a city, which non-elective officers or city employees must meet this requirement?"

Residency qualifications for officers elected or appointed to office in the city of the fourth class are found in Section 79.250, RSMo, as follows:

"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

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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 officers, the city attorney, and other employees having only ministerial duties, shall be residents of the city."

We are enclosing herewith an opinion issued by this office to the Honorable David H. Jackson, Prosecuting Attorney of St. Clair County, Osceola, Missouri, on December 23, 1969, in which we stated that a person may be appointed as a policeman in a fourth class city who is not a resident of such city.

Section 79.250, supra, provides that ". . . All officers, except appointed police officers, the city attorney, and other employees having only ministerial duties, shall be residents of the city."

In answer to your first question whether the city clerk is required to be a resident of the city, our answer is in the negative insofar as specific provisions of Section 79.320, RSMo, are concerned. Such section provides as follows:

"The board of aldermen shall elect a clerk for such board, to be known as 'the city clerk,' whose duties and term of office shall be fixed by ordinance. Among other things, the city clerk shall keep a journal of the proceedings of the board of aldermen. He shall safely and properly keep all the records and papers belonging to the city which may be entrusted to his care; he shall be the general accountant of the city; he is hereby empowered to administer official oaths and oaths to persons certifying to demands or claims against the city."

It is our view that duties of the city clerk of a fourth class city provided for in Section 79.320, supra, are ministerial. Under the specific provisions of Section 79.250, supra, the clerk who has only ministerial duties is exempt from the residency requirements. We have no information as to duties or responsibilities imposed on the clerk by ordinance and do not pass on the question whether he is required to be a resident of the city if other than ministerial duties are placed on him by ordinance.

In answer to your second question whether non-elective officers or city employees of a fourth class city are required to be residents of such city depends entirely upon the duties of such

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officers. In *Yelton v. Becker*, 248 S.W.2d 86 (St.L.Ct.App. 1952) the court stated, l.c. 89:

". . . Ministerial duties are those duties of a clerical nature which a public officer is required to perform upon a given state of facts, in a prescribed manner, in obedience to the mandate of legal authority, without regard to his own judgment or opinion concerning the propriety of the act to be performed. . . ."

We are unable to give a definite answer to your second and third question without having definite information as to the duties they are to perform in order to determine whether their duties are only ministerial. If they are not ministerial, they have to be residents of the city.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 516
12-23-69, Jackson