

**OPINION
43-35**

April 2, 1943(OPINION)

CITIES

RE: City Manager - Powers of

Your inquiry of March 30th, wherein two questions were submitted has been referred to the undersigned for attention.

Question No. 1. Has the city manager power to make the appointment of city auditor, city health officer, city attorney, or city assessor without the approval or confirmation of the city council?

"Section 5 of chapter 172 Session Laws of 1933 in part states:

"The city manager * * * shall have the power to appoint all appointive officers and power to remove such officers at will. Provided, however, that the appointment and removal of the city auditor, city health officer, city attorney, and city assessor shall be confirmed by the city council or city commission * * *."

Relative to appointments requiring confirmation section 485 of the revised volume 2 of McQuillin Municipal Corporations has this to say:

"Laws and municipal charters frequently require the appointment to be approved or confirmed by some officer or body, or board, as the council or Legislative body of the municipal corporation. This provision is usually held mandatory, hence, without approval or confirmation as prescribed, the appointee is not authorized to enter upon the duties of the office or employment. No reason need be given to the appointing officer for the refusal to confirm, though the law requires the use of good faith in refusing to confirm. Upon failure of confirmation, the appointing officer must submit with convenient dispatch another nomination."

I believe from the language used in chapter 172 Session Laws of 1933 and the rule laid down in McQuillin on municipal corporations there can be no question but what confirmation is absolutely necessary.

My answer to this question has been on the assumption that these officers are not included in the Civil Service Ordinance enacted in Minot. The civil service law is the latest enactment by our legislature, and while repeals by implication are not favored, where such repeal is clear and the intent of the Legislature is clear, they must be given effect, and it

seems to me it was the intention of the Legislature that when civil service is adopted the methods provided by it should be exclusive of all other methods.

Question No. 2. Does the City Council and Civil Service Commission have authority to propose or prepare a salary plan as provided by Section 5-303 of your ordinances or is the question of how the wages should be distributed or salaries paid a matter exclusively for the city manager?

Under section 5-303 of your ordinance, the Civil Service Commission acted merely in advisory capacity to the city council. Undoubtedly, under the provisions of section 1 of chapter 173 Session Laws of 1937 had not the management form of government been in effect in Minot, the council would have had authority to delegate the fixing of salaries to the Civil Service Commission. However, under the city management law we find the following:

"He shall prepare and submit to the council or board of city commissioners, between the first and tenth days of July in each year, an annual preliminary budget * * *, and shall fix the salaries of all appointive officers, provided that the total of said salaries does not exceed the total sum appropriated for such purpose by the city council or city commission * * *"

Under this Act, the city manager is specifically given the authority to fix the salaries of all appointive officers being limited only by the sum appropriated for such purpose. The language of this section would in effect give the council the right to limit salaries by limiting the appropriation, but it does not require the city manager to expend all that is appropriated. I believe since this is a special act specifically giving this duty to the city manager that no authority would rest in the hands of the Civil Service commission or the council relative to the fixing of salaries.

This matter is not at all free from doubt but I see not other way in reconciling the various statutes.

ALVIN C. STRUTZ
Attorney General