

**OPINION**  
**46-28**

October 7, 1946            (OPINION)

CITIES

RE: Civil Service Employees

Re: Civil Service Employees Under City Manager Plan of City Government

This office is in receipt of your letter of October 3, 1946, in which you say that petitions have been filed with the City Council of Grand Forks for the establishment of a City Manager Plan of government and that an election has been called by the City Council of Grand Forks for the submission of the proposal to the electors. The question discussed in your letter is the problem of the status of the civil service employees of a city under the city manager system of government.

The purpose of the merit or civil service system is, I assume, to remove the evils of the old fashioned "Spoils System," to obtain the services of qualified employees, and, as an inducement to acceptance of employment, to give them reasonable assurance of continued employment as long as satisfactory service is furnished. And whether a city government is conducted under a city commission, or under a mayor and council, or under a city manager, I assume that an assured tenure of office or employment, and the appointment of city employees under a merit or civil service system, are equally meritorious and desirable.

It is true that subdivisions one and four of sections 40-1005 of the Revised Code provides that the city manager, "may appoint and remove at will all appointive officers, except that the appointment or removal of the city auditor, city health officer, city attorney, and city assessor shall be subject to confirmation by the governing body," and, "that he may add to, take from, alter, and change the duties of the various appointive officers of the city other than himself except as such duties are fixed by statute."

Section 40-4407 of the Revised Code provides, "Such system, (civil service system) if deemed advisable by such body, may consist merely in the setting up of minimum employment qualifications for full time members of the city's paid fire and police departments and the heads thereof with provisions prohibiting their suspension, removal, or discharge, or the suspension, removal, or discharge of any other appointive employee or official except upon adequate reason and cause shown upon hearing had thereon after reasonable notice to the person or persons sought to be suspended, removed, or discharged."

It is my opinion that in a city, such as Grand Forks, which has established a civil service or merit system for the selection and classification of employees, and has adopted a pension plan, that upon the adoption of a city manager plan, the city manager acquires only such rights and powers with reference to the selection, removal or suspension of employees engaged by the city under the merit system as the governing body of such city had before the manager plan was

adopted. For it appears to me, Mr. Shaft, that when employees have been selected and have been induced to accept employment under a city ordinance establishing a civil service system, and a pension plan, that such employees have acquired certain legal and equitable rights of which they cannot be divested as long as such merit system is retained "except upon adequate reason and cause shown upon a hearing thereon after reasonable notice \* \* \*." And it is further my opinion, notwithstanding the provisions of subdivisions one and four of section 40-1105 that the city manager cannot arbitrarily shift or assign to other duties employees selected by the civil service commission, without the consent of such employees, "Except upon adequate reason and cause shown upon a hearing after reasonable notice \* \* \*."

In other words, it is my opinion that when a city which selects its employees under an ordinance and under statutes, establishing a civil service or merit system, that the adoption of the city manager plan does not acquire any greater power than possessed by the governing body of the city before the manager plan was adopted. As pointed out in your letter, section 40-4411 of the Revised Code specifically provides:

"If any city in this state which has established a civil service system in compliance with the requirements of this chapter shall change its form of municipal government, such civil service provisions as previously have been established shall continue under the new form of municipal government except as to those provisions which the governing body of the city may see fit to change within the limitations described in this chapter. \* \* \*"

The law authorizing the adoption of the city manager plan was enacted in 1919 and amended in 1933. Section 40-4411 of the Revised Code was originally enacted as section 1 of chapter 174 Session Laws of 1939. When section 1 of chapter 174 Session Laws of 1939 was adopted, it, in effect, and by implication, amended section 5 of chapter 172 Laws of 1933 (embodied in the Revised Code as section 40-1005) so as to exempt from the provisions of subdivisions 1 and 4 of said section 40-1005 cities adopting the city manager plan of government. This situation was evidently overlooked by the Code Commission. But notwithstanding the fact that the Revised Code was enacted by the Legislature as one bill and every section of the Code adopted at one and at the same time, in view of the fact that section 1 of chapter 174, Laws of 1939 actually amended section 5 of chapter 172 Laws of 1933 of sections 40-1005 and 40-4411, the intent and purpose of the Legislature when chapter 174, Laws of 1939, was enacted must be considered and given effect.

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