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MUNICIPAL CORPORATIONS—ADDITIONAL COUNCILMEN TO MEET REQUIREMENTS OF INCREASE IN POPULATION IN MUNICIPALITIES MUST BE ELECTED AT REGULAR MUNICIPAL ELECTION BY ELECTORS OF REDISTRICTED WARDS—COUNCIL FAILED TO MAKE PROVISION FOR SAME PREVIOUS TO MUNICIPAL ELECTION OF 1921—NOW, NO PROVISION UNTIL ELECTION 1923—CITY OF MANSFIELD.

1. *The additional councilmen, provided by section 4206 G. C. to meet the requirements of the increase in population in municipalities, must, in accordance with the provisions of section 4212 G. C. be elected at a regular municipal election, by the electors of the redistricted wards, created previously by council or the director of public service for that purpose.*

2. *Council having failed to make provision, in conformity to the provisions of section 4212 G. C., for the additional councilmen to which the city of Mansfield is entitled under section 4206 G. C. previous to the municipal election of 1921, no provision for the qualification of such officials as councilmen can be made until the next regular municipal election occurring in the year 1923.*

COLUMBUS, OHIO, February 6, 1922.

*Bureau of Inspection and Supervision of Public Offices, Columbus, Ohio.*

GENTLEMEN:—Your letter of recent date has been received, reading as follows:

We respectfully request your written opinion on the following matter:

By the Federal census of 1920 the population of the city of Mansfield was 27,824. Under section 4206 G. C., the city of Mansfield would be entitled to two additional councilmen. The city should have been redistricted as to wards and at the last election held in November, these councilmen should have been elected, but this they failed to do.

*Question:* What course should the city now pursue in electing or appointing these additional councilmen?"

Pertinent to your question, section 4206 G. C. provides:

"The legislative power of each city shall be vested in, and exercised by a council, composed of not less than seven members, four of whom shall be elected by wards and three of whom shall be elected by electors of the city at large. For the first twenty thousand inhabitants in any city, in addition to the original five thousand, there shall be two additional members of council, elected by wards, and for every fifteen thousand inhabitants thereafter there shall be one additional member similarly elected, provided that the total number of members of such council shall not exceed thirty-two. When the total number of members of council is fifteen or more, one member of every five shall be elected at large, and the remainder from wards."

This section provides that for the first twenty thousand inhabitants in any city, in addition to the original five thousand, there shall be two additional members of council elected by wards. Since by the Federal census of 1920 the population of the

city of Mansfield was 27,824, it is obvious under the provisions of this section that said city was then entitled to the two additional councilmen provided by the section. In the instance under consideration, council failed, as stated, to provide for this event.

Section 4212 G. C. provides:

"After each recurring Federal census, and within three months after the issuance of the proclamation, by the secretary of state of the population of such city, and when there is annexed thereto any territory containing, by the last federal census, such number of inhabitants as will entitle the city to an additional member of the council, the council shall subdivide the city into wards, equal in number to the members of the council therein to be elected from wards. If the council fails to make such subdivision into wards within the time herein required, on the application of the president of the council, it shall be made by the director of public service. All wards shall be bounded, as far as practicable, by county lines, streets, alleys, avenues, public grounds, canals, water courses, corporation lines, center lines of platted streets, or railroads, and shall be composed of adjacent and compact territory, and as nearly equal in population as practicable."

It is evident that the section just quoted provides for the subdivision of the city, by council, into wards, within three months from the time of issuance of the proclamation by the Secretary of State, required after each recurring Federal census, and in event council fails to make such subdivision, such a duty becomes incumbent upon the Director of Public Service. It would also seem apparent that the section cited comprehends the event created by an increase of population, making provision therefor, by the subdivision of the city into new wards previous to the municipal election.

In the instance under consideration, it is thought that the two additional councilmen, provided for by section 4206 G. C., would be unable to qualify as such, until the office which each may be expected to represent, had been lawfully established and created, and that such provision may only be made in compliance with section 4212 G. C.

Since council failed to provide for such additional councilmen previous to the municipal election held in 1921, it is not believed at this late date that a subdivision of the city into new wards or districts by act of the Director of Public Service, under section 4212 G. C., could possibly be effected without seriously disturbing the legal status of the present elected councilmen, as well as the territory or wards which they represent.

In view of such obstacles, therefore, as well as the fact that there is no legal provision for the contingency cited, it cannot be seen at the present time how the two additional councilmen indicated may lawfully qualify as such officials for the city of Mansfield. It is true, the failure of council to subdivide the city into wards, as provided by section 4212 G. C. may be remedied by action of the Director of Public Service, who, prior to the next regular municipal election, to be held in 1923, may subdivide said city into wards as provided by this section, thus making provision for the election by wards of the additional councilmen contemplated by section 4206 G. C.

In specific answer to your question, therefore, you are advised that until the municipal election of 1923, no provision can lawfully be made for the qualification of the additional councilmen contemplated by your inquiry.

Respectfully,

JOHN G. PRICE,

*Attorney-General.*