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Proposed Legislation: City Manager Legislation in Kentucky

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PROPOSED LEGISLATION

CITY MANAGER LEGISLATION IN KENTUCKY

The city manager movement had its beginning in Kentucky in 1928. At that time a well-directed and concerted drive by the various chambers of commerce and other civic organizations in the cities of the second and third classes, resulted in the introduction and subsequent passage of two city manager enabling acts by the General Assembly of that year—one for second class and one for third class cities.

These acts[1] provided that any city of the second or third class might submit to the voters the proposition whether it wished to be governed under the council-manager form of government, and if the majority vote was affirmative the commissioners and the mayor should then select a manager who should hold his position at the will of the board. These acts would have made possible a true city manager government by designating the city manager the administrative head of the city, by allowing him freedom in the exercise of his administrative functions, by making his executive and administrative qualifications the sole basis for his selection, and by not limiting his residence to the city or state.

In November 1928, the manager form was adopted by the voters in Covington, Lexington, and Owensboro, and if it had not been for a determined opposition, all three cities would have joined the ranks of the more than 400 manager cities of the United States on January 1, 1931. But, unfortunately this legislation was ill-starred, and opposition quickly developed which led to a contest of the law relating to third class cities in the Court of Appeals. The law was attacked on three grounds: first, that it was in conflict with Sections 23, 107, and 160 of

[1] Chapters 84 and 78, Acts of 1928.

the Constitution; and second that it was contrary to Section 51.[2] The first three sections provided that no office shall be created to which a person can be appointed for other than a definite term, that the term of elected or appointed ministerial or executive officers shall not exceed four years, and that no "mayor or chief executive or fiscal officer of any city of the first or second class" shall succeed himself in office; and Section 51 provides that any law enacted by the General Assembly shall cover only one subject which must be expressed in its title. After construing liberally all points relative to the manager form of government, the court voided the statute in question upon the technical grounds that it contained more than one subject, in violation of Section 51 of the Constitution.[3]

This decision merely had the effect of retarding manager government in Kentucky two years. Immediately the advocates of the plan marshalled their forces in an effort to have the legislature pass a bill which would be free from the defects of the 1928 measure. Their hopes were realized when the legislature passed such a bill and it became law on June 18, 1931. This act, however, applies only to second class cities; Lexington, Covington, and Newport are operating at present under this law, and Ashland has voted to come under the operation of the law on January 1, 1934.

For second class cities, this law is all an advocate of manager government could desire, but its scope is rather restricted. The publicity given the accomplishments of city manager government in Lexington and Covington has been responsible for numerous efforts to make this new form possible in all the cities of the state. Investigation will reveal the fact that the city manager has been more successful in cities of from 8,000 to 15,000 than in the larger cities and thus it is urged that the medium size cities of Kentucky be given the opportunity to adopt this improved form of government. Of course no attempt at compulsion has been suggested, but merely that cities be permitted to change to city managership if they so desire.

To this end, a city manager enabling act—House Bill num-

[2] "The City Manager in Kentucky," by Roy H. Owsley, Nat. Mun. Rev., XX:134, March, 1931.

[3] *City of Owensboro* v. *Hazel*, 229 Ky. 752, 17 S. W. (2d) 1031.

ber 475—has been introduced in the 1932 General Assembly of Kentucky by Representative Fentress of Muhlenberg County, which if passed will enable cities of the fourth class—3,000 to 8,000—to adopt a city manager form of government. This measure is a step in the right direction, and must be recommended, even though it does not go as far as some city manager proponents would suggest. Since city manager government has proved successful in cities and towns with populations ranging from 222 to nearly one million, there is no real reason why all the cities and towns of Kentucky should not be permitted to adopt this innovation in city government.

The bill as introduced in the General Assembly will not provide the best form of city manager government, but it will be an attempt in the right direction. The proposed law fails to be a full-fledged city manager law in four respects. First, it does not provide for non-partisan elections for councilmen, which all authorities on city managership strongly recommend. In the second place the law states that the Mayor as provided for by Section 160 of the Constitution shall be the city manager, appointed by the council. When appointed, he must possess no greater qualifications as to residence of the city or state than are expressly required by the Constitution. In this regard it does not follow the law now in force for second class cities, which expressly states that there shall be a mayor and commissioners elected by the people, and these officials shall select a city manager without regard to residence. In the third place, instead of providing an indefinite term of office for the manager, making him removable at all times by the council, the law states that he shall hold office for four years, subject of course, to removal for cause. This is not the best form of city manager government, in that it does not guarantee the desirable and necessary element of responsibility of the manager to the council. In the fourth place, the law distinctly calls the mayor-manager an official and not an employee, which in the light of the decision of the Court of Appeals in 1928, means that the constitutional salary limitation would apply to a city manager appointed under authority of the proposed law.

On the other hand, however, the proposed measure does purport to be a bona fide manager law. It provides for the election of the manager by the council, and his responsibility

to that body. Also it provides that he shall be chosen solely on the basis of his executive and administrative qualifications. In addition it is provided that he shall be responsible for the administration, with power to appoint and remove subordinate officials without the consent of the council. The manager, under the proposed law, would be a full-time official, devoting all of his time to the affairs of the city, and engaging in no other business or profession.

The advantages of the city manager plan are obvious to any business man. If we admit that the city is a business corporation, or is coming to be such an enterprise, we must admit that a business form of government is needed for such a unit. The city manager plan provides a complete analogy to a business corporation. In a business enterprise there are three parts—the stockholders, the board of directors, and the business manager. A city's government under the manager plan has three parts—the voters or the stockholders, the council or the board of directors, and the city manager or the business manager. In practice as well as theory, the mind of man has not invented a scheme of government which surpasses the manager form. It has the distinct advantage of providing a separation of functions with a unification of powers.

The city manager form of government is beyond the experimental stage. Its value has been demonstrated over and over again, and no city has anything to fear by reason of its adoption. While it would be desirable that an all-inclusive and bona fide manager enabling act be enacted by the General Assembly, all proponents of good government should lend their support to the measure now before the legislature, with the idea of course, of using this as an entering wedge or a place from which to spring to something better.

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