OPINION
51-14

November 14, 1951 (OPINION)

CITIES

RE: Civil Service, Demoted or Discharged Servants, Right of Appeal

In your letter of November ninth you ask for an opinion regarding the constitutionality of section 5-205, Suspension, Demotion, and Dismissal, Article 2, Chapter V.Civil Service, Revised Ordinance of the city of Minot, together with section 5-206, paragraph (G) thereof.

We find that the ordinance is in all things constitutional with the exception that a person who has been suspended, demoted, or dismissed is not permitted to appeal to a higher court.

Chapter 40-44 of the 1943 Revised Code provides for civil service in cities. Section 40-4407 sets forth the purpose and intent of the chapter and includes the types of systems that may be set up.

Under the system in use in the city of Minot, persons employed under the civil service system have acquired, as a result of examination special skills or other qualifications superior to others in the same class who have made applications, a distinct interest and right in their employment.

Ordinarily, the civil service commission has no power to appoint to any office or position, but the power to appoint is in the head of the department or office in which a position is listed under the Civil Service Act. The commission generally certifies to the officer having the power of appointment a limited number of names of those standing highest on the eligible list, and such officer selects his appointee from among those certified. (10 Am. Jur. p. 927).

The general rule in most jurisdictions appears to be that an employee may be removed only after a hearing or trial. See 34 L.R.A. (N.S.) 486.

The right to appeal appears unquestioned in cases cited in 62 C.J.S., sections 508 through 535.

Proceedings for the removal of a municipal officer must be conducted in the manner prescribed by law. Where the form of procedure is prescribed by a general statute, the charter, or an ordinance, the terms thereof must be adhered to and followed. The mode of removal prescribed by the Legislature or the charter may be exclusive. Where the Constitution provides for impeachment of an officer for any misdemeanor or malfeasance in office, providing that he shall be tied therefor in the manner provided by the Legislature, he is not protected thereby from a summary proceeding to remove him for malfeasance under a statute. (See Bryan v. Landis, 142 So. 650, 106 Fla. 19. See also 43 C.J. p. 663, note 31).

The proceeding has been considered judicial or quasijudicial in character, requiring every essential element of a fair trail. (State v. Board of Commissioners of Fargo, 245 N.W. 887, 63 N.D. 33).

Setting out evidence in order to review a court to judge of its sufficiency, see Mullane v. South Amboy, 90 A. 1030, 86 N.J. Law 173. See also Branden v. San Antonio, Civ. App. 216 S.W. 282.

In view of the decisions in the cases cited, it is our opinion that the sections in question can be cured by removing that portion which states "The findings and decisions of the Civil Service Commission shall be final and not subject to review by any court except as to correctness of procedure followed." The reviewing court will treat the findings of the Civil Service Commission in like manner to other administrative agencies.

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