Duties of the City Clerk and Powers of the Common Council

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OF THE COMMON COUNCIL
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In treating of the duties of the city clerk and the powers of
the common council, the following article will treat them in gen-
eral terms, although the particular duties enumerated are those
applying to the city of Milwaukee. I believe that the article will
be of more general benefit if written in general terms as, gener-
ally speaking, the duties of the city clerk and the powers of
the common council, with slight variations, are about the same in
every city the size of Milwaukee.

CLASSES OF CITIES.

Cities are generally divided in classes, and in the state of Wis-
consin there are four classes, viz., cities of the first class, con-
taining a population of 150,000 or over; cities of the second class,
containing a population of 40,000 or over and under 150,000;
cities of the third class, containing a population of 10,000 or
over and under 40,000; cities of the fourth class, containing less
than 10,000 inhabitants. A village, once incorporated into a city,
then goes automatically from one class into the other as soon as
it is established that its population has reached the number re-
quired for the next higher class.

The city of Milwaukee is the only city in the state of Wis-
consin which is in the first class, and therefore the following
duties and offices devolving upon the officers and board of alder-
men are applicable to cities of the first class only, although many
of the other cities have similar duties and powers.

OFFICES OF THE CITY.

The offices of the city are established by Section 1 of Chapter
2 of the City Charter, which is Chapter 205 of the Laws of 1887,
as amended, and provides that the officers of the city shall be a
mayor, a board of aldermen constituting the common council, a
city treasurer, a city comptroller, a city attorney, a city clerk, a
commissioner of public works, a city engineer, a tax commis-
sioner, a school board, a board of park commissioners, a sewerage
commission, a board of election commissioners, a public debt com-
misson, a board of city service commissioners, a board of fire
and police commissioners, a health commissioner, a justice of the
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peace, an inspector of buildings, a chief of police, a chief engineer of the fire department, a board of trustees of the public library and the public museum, and such other officers as the common council may from time to time designate.

We are particularly interested in the office of city clerk, who is elected by the common council on the third Tuesday of April, in each even numbered year, and holds his term of office for a period of two years, co-extensive with that of the members of the common council.

POWERS AND DUTIES OF THE CITY CLERK.

The duties of the city clerk are more numerous in actual practice than they are defined in the charter of the city, as the common council has the power to enlarge upon the duties of a municipal officer provided they do not conflict with the law itself. As defined by the charter, the duties of the city clerk, briefly, are these:

He shall receive and take the oath of office of every public officer and file the same in his office; he shall receive and keep on file in his office the bonds of every public officer required to file a bond; he shall make and deliver true copies of all official bonds to the comptroller and register them in the office of the register of deeds; he shall be the custodian of the corporate seal of the city of Milwaukee and affix it to such instruments as require the seal in transacting the corporate business of the city; he, together with the mayor, shall sign all contracts under seal on behalf of the city and sign all bonds issued by the city for any public improvement; he is the custodian of the official records of the city, except such records as peculiarly pertain to separate departments; he is the clerk of the common council and has charge of the arranging of the meetings of the committees of the common council, the making of the proceedings of the common council, publishing of all official notices in the daily papers, as required by law; he has charge of the filing of all chattel mortgages, conditional sales contracts, leases, releases and satisfactions; he is a member of the board of review, which reviews the annual assessments of property in the city; he issues orders on the city treasurer for the payment of bills against the city; copies of any and all books, papers and documents duly filed and kept in his office, and of the endorsements thereon, and transcripts from the records of the proceedings of the common council certified by him under
the corporate seal of the city, shall be evidence in all courts and places of the contents thereof and of such endorsements in like manner, and have the same force and effect as if the originals were produced. He also has power to administer oaths and affirmations authorized to be taken by and under the laws of this state.

In addition to the foregoing duties and powers enumerated in the charter, he has charge of the issuing of all licenses, among which are the following: auctioneer, auto for hire, bill poster, billiard table, bowling alley, carriage, chauffeur, circus, dog, dray, express, employment bureau, exhibitions, intelligence office, jitney bus, junk shop, Klondyke, steeplechase, tivoli tables, liquor (retail and wholesale), loan broker, omnibus, pawn broker, pharmacist, pool table, second-hand dealer, scavenger, tallyho and theater.

The city clerk's office acts as a general bureau of information for practically the entire balance of the city departments, and the city clerk is the confidential clerk of the common council and has charge of the arranging of all meetings of the common council and its committees, of which more will be stated under the heading of common council.

Inasmuch as the office of city clerk and the common council are so closely related, I have merely enumerated the duties of the city clerk and will take up in more detail the powers and duties of the common council.

**COMMON COUNCIL.**

The common council is composed of local or ward aldermen and aldermen at large. At the present time, thirty-seven members constitute the board of aldermen for this city. In different cities the number varies, but the work of every common council is along the same general lines.

The members of the common council are elected at the general city election held on the first Tuesday in April of each even numbered year. On the third Tuesday of April of each even numbered year, the new common council is inaugurated. At this meeting, from its own members, the common council elects a presiding officer, called the president of the common council. It also elects the city clerk, as previously stated. The president of the common council is elected for a term of two years. At the organization meeting, it is customary that the newly elected mayor present to the common council, either personally or in
writing, his inaugural message, covering such points of legislation as he deems essential to be carried out by the administration. After the organization of the common council and the inaugural address of the mayor, the common council proceeds with its regular routine work.

At the first regular meeting, the president of the council appoints members of the various standing committees which have been established by the adoption of a set of rules for the common council. In this city, five members constitute a committee, and the standing committees are as follows: Finance-printing, judiciary, water works-sewerage, public welfare, railroads-bridges, public buildings and grounds, licenses, legislation-rules, streets and alleys, revision and engrossed ordinances.

The powers of the common council upon which it can legislate as a body are clearly defined by the charter of the city and are found in detail in Chapter 4 of the charter and subsequent amendments passed by the legislature, as follows:

"Section 2. The common council shall hold stated meetings at such times and places as they shall appoint; and the mayor or the president of the board of aldermen may call special meetings thereof by notice of at least twenty-four hours, to each of the members, to be served personally, or left at his usual place of abode. Special meetings shall also be called by the president, at the written request of five aldermen. The common council shall determine the rules for their own government and proceedings, provided such rules are consistent with the provisions of this act. A majority of the members elected shall be required to constitute a quorum for the transaction of business, but a smaller number may adjourn; their session shall be open and public; their proceedings shall be recorded; and all their papers and records, and all the election returns shall be deposited with the clerk of the common council, and the same may be examined at any time in the presence of the clerk; and each member of the common council shall have one vote, and no more on any one question. The ayes and noes may be required by any member; and on all questions, ordinances or resolutions for assessing and levying taxes, or for the appropriation or disbursement of money, or creating any liabilities or charge against said city or any fund thereof, the vote shall be taken by ayes and noes; and every vote by ayes and noes shall be entered at length upon the journal. The common council shall be the judge of the election and qualifications of its own members, and may punish its members or other persons present, by fine, for
disorderly behavior; may compel the attendance of its mem-
bers upon its sessions, and employ the police of said city
for that purpose; and may fine or expel any member for
neglecting his duty as such member, or for unnecessary
absence from the sessions of the board. At all elections or
confirmations by the common council, the vote shall be given
viva voce, and shall be duly recorded by the clerk in the
journal; and the concurrence of a majority of all the mem-
ers elect shall be necessary to an election or confirmation.
The common council is a continuing body, and unfinished
business pending before it shall not lapse or go down with
the council year, but all pending business before the com-
mon council, or any committee thereof, at the termination
of any council year shall be considered as pending before
the common council of the next succeeding council year, or
the corresponding committee thereof, and may be acted upon
and disposed of by the council of such succeeding year in
the same manner and with the same effect as if no change
in such common council had taken place, by the expiration
of a council year."

The powers of the common council are generally set forth
in Section 3, as follows:

"The common council shall have the management and
control of the finances, and of all the property of the city,
except as in this act otherwise provided, and shall likewise,
in addition to all other powers herein vested in them, have
full power and authority to make, enact, ordain, establish,
publish, enforce, alter, modify, amend and repeal all such
ordinances, rules, by-laws and regulations for the govern-
ment and good order of the city—for the benefit of the
trade, commerce and health thereof—for the suppression
of vice—for the prevention of crime—and for carrying
into effect the powers vested in said common council, as
they shall deem expedient; and to declare and impose pen-
alties, and to enforce the same against any person or per-
sons who may violate any of the provisions of such ordi-
rances, rules, by-laws and regulations. And such ordi-
rances, rules, by-laws and regulations are hereby declared
to be, and have the force of law, provided, that they be not
repugnant to the constitution of the United States or of this
state. And for these purposes the common council shall
have authority—anything in a general law of this state to
the contrary notwithstanding—by ordinances, resolutions,
by-laws, rules or regulations."

To regulate groceries, taverns, victualing houses, saloons,
gardens and any other places where wines or other liquors are
sold, either in wholesale or retail quantities; to license, tax, regu-
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late, suppress or prohibit billiard tables, pool tables, pigeon tables, shooting galleries, nine or ten pin alleys, bowling saloons and ball alleys; to license, tax, regulate, suppress or prohibit all exhibitions, shows, concerts, musical entertainments, caravans, circuses, theatrical performances and other exhibitions; to restrain or prohibit gaming and fraudulent devices and practices, and playing of cards, dice and other games of chance; to prevent any riot, noise, disturbance, disorderly assemblages; to suppress and restrain disorderly houses or houses of ill fame; to compel owners or occupants of any grocery, cellar, tallow chandler shop, soap factory, tannery, stable, barn, privy, sewer, sewer connection or other unwholesome house or place, to cleanse, remove, construct, reconstruct, abate or locate the same in such place, from time to time as it may be deemed necessary for the health, comfort or convenience of the inhabitants of the city; to direct the location and management of, and regulate breweries, tanneries, packing houses, livery stables, sales stables, distilleries, slaughtering establishments, establishments for steaming or rendering lard, tallow, offal, etc.; to regulate soap factories and places where any nauseous, offensive or unwholesome business may be carried on; to establish and regulate public markets; to regulate butchers and the sale of game, poultry, fresh meats, vegetables, fish, butter, fruit, eggs, milk and other provisions; to cause the seizure of tainted or unwholesome meat, butter, fruit or other provisions; to license and regulate meat markets; to direct or prohibit the location and management of houses for the storing of gunpowder or other combustible or dangerous materials; to license the storage and use of nitric, sulphuric and other acids which create fumes, and to regulate the storage thereof; to regulate and restrain the keeping and conveying of gunpowder and other combustible and dangerous materials and the use of candles in barns, stables and outhouses; to prevent the shooting of firearms and crackers and other fireworks; to prevent the encumbering of streets, sidewalks, lanes, alleys, public grounds, wharves and docks with carriages, carts, wagons, sleighs, sleds, wheelbarrows, boxes, lumber, firewood, timber, posts, signs, awnings; to prevent horse-racing and immoderate riding or driving on the streets; to prohibit the abuse of animals; to compel persons to fasten their horses, oxen or other animals while standing in the street; to regulate and determine times and places of bathing and swimming in the canals, rivers and harbors and other waters in the city and to prevent any obscene or indecent exhibition,
exposure or conduct; to restrain and punish vagrants, mendicants, street beggars and prostitutes; to restrain drunkards, immoderate drinking or obscenity in the streets and public places; to restrain and regulate or prohibit the running at large of cattle, horses, mules, swine, sheep, goats, poultry and geese and to authorize the restraining, impounding and sale of the same; to prevent the running at large of dogs and to authorize the destruction of same when at large, contrary to the ordinances; to provide for the impounding and muzzling of dogs and to provide a license for the keeping of dogs; to license, regulate and suppress hackmen, draymen, cartmen, porters, omnibus drivers, cabmen, and carmen and to prescribe the fee charged to the public; to prevent and regulate the rolling of hoops, flying of kites, playing of ball and other amusements or practices having a tendency to annoy persons passing on the sidewalks, or to frighten teams and horses; to regulate, control and prevent the landing of persons from boats or vessels wherein are contagious or infectious diseases or disorders, and to prevent the introduction of contagious diseases into the city; to make quarantine laws or regulations; to abate nuisances injurious to the public health; to prohibit the leaving of books, pamphlets or other articles or matter by hawkers, peddlers or mercantile agents, at houses or factories for inspection; to regulate the burial of the dead and registration of births and deaths; to provide hospital and cemetery grounds; to direct the returning and keeping of bills or mortality; to impose penalties on physicians, sextons and others for failure to make reports; to abate and remove all nuisances under the ordinances or at common law, and to provide penalties for the violation of ordinances; to prevent any person from bringing, depositing or having within the city limits any putrid carcass or other unwholesome substance and to provide for the destruction of the same; to erect and establish one or more pesthouses, contagious disease hospitals and dispensaries, and control and regulate the same; to prevent the ringing of bells, blowing of horns and bugles, crying of goods and all other noises, performances and devices tending to the collection of persons on the streets or sidewalks, by auctioneers, etc.; to control, regulate or prohibit the use of steam whistles within the city; to control and regulate the streets, alleys and public grounds of the city and provide for sprinkling and to remove and abate any obstructions and encroachments therein; to compel the owners or occupants of buildings and grounds to keep snow, ice, dirt and rubbish from the sidewalks,
streets and alleys opposite thereto; to control, regulate, repair, mend and clean the streets, alleys, bridges and side and cross walks, and open, widen and straighten and vacate streets and alleys, and establish or alter the grades thereof; to prevent the encumbering of the streets and alleys and protect the same from any encroachment or injury; to regulate the manner of using the streets and alleys and sidewalks; to grant special privileges, in accordance with provisions of law, to persons desiring to lay conduits, pipes, tunnels, etc., across streets, to project parts of their buildings over lot lines; to grant privileges to lay down spur tracks, sidetracks, street railway tracks; to grant franchises for the operation of railroads, steam and electric, underground or elevated; to prevent persons from riding or driving any horse or other animal on the sidewalks, or in any way doing damage to the sidewalks; to make, establish and regulate public pounds, pumps, wells, cisterns, reservoirs, and erect and maintain a system of water works for the city and its inhabitants; to own and operate municipal lighting plant and its distribution system; to erect lamps and regulate the lighting thereof in streets, public grounds, public buildings and otherwise; to install special lighting systems upon request of citizens, by petition, in front of certain buildings and within certain blocks, and distribute the cost of operating the same among the city and the abutting property owners; to regulate the sale of bread, prescribe the size and weight of bread in the loaf, and the quality of the same; to establish a bureau of weights and measures, and to require every merchant, retailer, trader and dealer in merchandise or property of any description which is sold by measure or weight, to cause his weights and measures to be sealed by the city sealer and be subject to inspection, and to provide for the punishment of persons using false weights and measures; to regulate the weighing and sale of hay and the places and manner thereof; to regulate the cutting and sale of ice and to restrain the sale of impure ice; to regulate the measuring and sale of wood, coal, lime and other products; to establish markets in the city for the sale of food supplies, hay and other products; to regulate the time, place and manner of holding public auctions or vendues; to tax, license and regulate road vehicles, except automobiles, auctioneers, distillers, brewers, pawn keepers, pawn brokers, loan brokers, keepers of loan offices, dealers in secondhand goods and persons who loan money upon the security of chattel mortgages or other chattel security, keepers or proprietors of intelligence offices, junk
shops, places for the sale of secondhand goods, wares and merchandise; to tax, regulate and restrain hawkers, peddlers and vendors of milk, and runners or solicitors for steamboats, vessels, cars, railroads, stages, public houses and other establishments, keepers or proprietors of gift book stores, gift concerts and other gift enterprises; to fix and regulate the amount of license for the same, the time when such licenses shall be granted and procured and the manner of granting the same; to provide penalties for the failure to obtain license or operate without license; to regulate or prohibit the keeping of any lumber yard and the placing, piling or selling of lumber, timber, wood or other combustible material; to regulate the measuring and inspecting of lumber, shingles, timber, etc.; to regulate the place and manner of selling pickled and other fish; to regulate the inspection of whisky and other liquors to be sold; to provide for the inspection and regulation of stationary steam engines and boilers, and elevators; to appoint inspectors, weighers and gaugers and regulate their duties and prescribe their fees; to regulate and prohibit the use of locomotive engines in the city; to require railroad cars to be propelled by other power than that of steam; to require railroad companies to construct and maintain, at their own expense, bridges, tunnels and other conveniences, at public railroad crossings; to regulate the running of horse railway cars and tracks, electric railway cars, etc.; to construct viaducts over tracks, to build viaducts and bridges, stairways and approaches to bridges and viaducts; to sell tracks owned by the city on viaducts and bridges to railroad companies, etc. (The common council is prohibited from granting an exclusive franchise to any railway or street railway company over tracks owned by the city on any bridge or viaduct.) To appoint watchmen, policemen and regulate the police force, prescribe the duties of policemen (except as limited by the fire and police commission law); to compel owners and occupants of houses, stores and other buildings to number the same; to declare as a nuisance certain weeds and provide for the removal of the same; to direct and regulate the planting and preserving of ornamental trees upon the streets and public grounds; to preserve, improve and develop the harbor and to preserve the waters pure and in a healthful condition in the rivers and lakes of the city; to regulate and prescribe the mode and speed of entering and leaving the harbor, passing the bridges, of coming to and departing from wharves of the city, by steamboats, canal boats and other craft and vessels; to estab-
lish the office of harbor master and generally regulate the harbor of the city; to regulate the construction of piers, wharves and docks in the city and establishment of dock lines, and control the prices for dockage and storage in the city; to lease wharfing privileges of the rivers at the ends of streets upon terms and conditions to be fixed by the common council; to authorize the taking up and providing for the safekeeping and education of all children who are destitute of proper parental care and growing up in mendicancy, ignorance, idleness and vice; to authorize the arrest, fine and imprisonment of all vagrants, drunkards, idlers, gamblers, fortune tellers, beggars, etc.; to regulate or prohibit the carrying or wearing by any person under his clothes any concealed weapons, such as a pistol, Colt, slungshot, cross knuckles, knuckles of lead, brass or other metal, bowie knife, dirk knife or dagger, or any other dangerous weapon; to control and regulate the construction of buildings, chimneys, stacks, etc.; to compel the erection of fire escapes on halls, theatres, opera houses, hotels, boarding houses, churches, schools or any other buildings where persons assemble; to require the erection of ladders, fire escapes, standpipes or other appliances for the escape of persons from such buildings, and to aid the extinguishment of fires; to construct and maintain a dam or dams and necessary power house to create power for lighting, heating, pumping and other purposes; to maintain municipal fuel yards; to acquire property for fuel yards; to regulate all billposters, distributors and outdoor advertisers; to regulate and license department stores; to employ special legal talent in special cases; to prohibit smoke nuisances; to license electrical workers and electrical installation and trades; to establish residence districts in certain sections of the city; to provide for sane Fourth of July celebrations, Memorial day celebrations, public concerts in public parks and auditoriums; to erect a municipal ice plant; to license chauffeurs and drivers of automobiles and similar motor vehicles for hire; to provide for the erection, maintenance, operation and management of a public auditorium, opera house, natatorium, etc.

HOME RULE.

It will be noticed from the foregoing that the powers of the common council cover a very wide range, and the common council is in a position to do a great many things necessary for the betterment of the city. However, occasionally it is found that even with all the foregoing powers, the city can not do certain
things. Therefore, a movement was started several years ago, called the "home rule" movement, which is designed to give cities powers to govern themselves on purely local matters without asking for special legislation from the legislature at every session of that body. Up to the present time, the idea of home rule for cities has not fully materialized, although some advancement has been made in that direction.

It is sometimes difficult to understand just what is to be included under home rule, but generally speaking, the intention under the home rule provision is to give the city absolute power to legislate upon all matters which are peculiarly local and which are necessary for the development of the city, which would include the regulation of health, building up the city in the way of public improvements, and acquisition of public utilities — electric light, power, gas, street railway and other public utilities.

When cities do acquire the measure of home rule which is necessary for the proper development of the city, a great many more things can be accomplished by them than are enumerated in this article. There is no question but that the city is more or less hampered now when it has to apply to the legislature every two years for the enlargement of its powers, and about which members from the rest of the state know very little, as they are not in a position to know the conditions existing in a large city and are therefore to a certain extent disqualified to pass fairly upon the requests made by a large city.

The city should not be obliged to beg the legislature regularly for enlargements of its powers. That should be inherent in the city, and home rule is intended to give it that.