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TÍTULO: Función representativa externa del titular de una entidad municipal.

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RESUMEN: El documento plantea el tema de la representación en las relaciones de derecho público. Los autores han identificado y divulgado las características de la institución de representación en el derecho constitucional. Se presta especial atención a las características de la función representativa del jefe de una entidad municipal y la interacción del jefe con los órganos representativos de una entidad municipal. Se observa que una de estas características se debe al método de ocupar la posición más alta en la entidad municipal. El documento también proporciona un análisis detallado de las disposiciones de la ley que rigen la organización del autogobierno local y el funcionamiento de los organismos locales de autogobierno en la Federación Rusa.

PALABRAS CLAVES: gobierno local, representación, jefe de gobierno local, gente, ley.

TITLE: External representative function of the head of a municipal entity.

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ABSTRACT: The document raises the issue of representation in public law relations. The authors have identified and disclosed the characteristics of the institution of representation in constitutional law. Special attention is paid to the characteristics of the representative function of the head of a municipal entity and the interaction of the head with the representative bodies of a municipal entity. It is observed that one of these characteristics is due to the method of occupying the highest position in the municipal entity. The document also provides a detailed analysis of the provisions of the law that govern the organization of local self-government and the functioning of local self-government bodies in the Russian Federation.

KEY WORDS: local government, representation, head of local government, people, law.

INTRODUCTION.

The performance of the representative function by the heads of municipal entities is an important part of their activity. The Federal Law “On the General Principles of the Organization of Local Self-Government in the Russian Federation” (Part 4, Article 36) imposes on a head of a municipal formation the right and duty to represent a municipal formation in relations with local governments of other municipal formations, state authorities, citizens and organizations and the right to act on behalf of the municipal entity without power of attorney.

Thus, a head of a municipal entity provides representation of the municipal entity to the outside; i.e., in relations with state authorities, with local governments of other municipalities. At the same time, they act as a kind of "intermediary" between the municipal entity and citizens, their

associations, acting as a representative of the municipal entity in relations with citizens and as a representative of citizens in relations with the municipal entity. As noted by foreign authors, "despite the lack of formal authority, the mayors of Canadian municipalities play a significant role in the municipal administration system, since they act as a link not only between the council and the structural elements of the local administration, but also because of their role as a local leader between municipalities and the local community whole" (Sancton A. 1994:179-180). The dual nature of the representational authority of a head allows us to consider two aspects of representation: external and internal.

The internal aspect is popular representation (the expression of the interests of the population). A head of a municipal entity is a representative of the population of the municipal entity and is obliged to express the interests of the residents of this entity. At the same time, bright personalities from among the mayors are able to have a significant impact on the management of municipal entities using personal connections and skillful manipulation of public opinion (Urbaniak T. 2009). Special studies rightly point out that "popular representation is a multifaceted constitutional and legal category, the essence of which manifests itself in institutional, functional and legal aspects" (Astafichev P.A. 2004). It is an institution of constitutional law considered as a function carried out by elected public authorities (including heads of municipal entities), is a legal relationship (legal relationship between legal entities, involving a set of mutual rights and duties of representatives and the represented).

Results.

The functioning of public authority at the level of local self-government is carried out "in the eyes of" the population; therefore, the relationship "represented - representative" is the closest and most controllable. Moreover, the lower the level of the municipal entity (village, residential settlement, small town), the closer the authorities are to the people.

Abuses of power at any level cannot be excluded, but at the grassroots level, they are more effectively detected and eradicated. It is important that the legislative mechanism allows the people to intervene in the process of exercising power and adjust the actions of its elected representatives.

This mechanism includes the procedure for empowerment (appointment). The law provides for two possible procedures for holding the position of the head of a municipal entity: direct elections and indirect elections (election by a representative body). In the first case, the head receives a mandate from the people directly and is a fairly strong and independent political figure. The “representative - represented” relationship that emerged is more pronounced than in the case of indirect election. However, voter control is less effective and efficient. In the second variant, the process of empowering the head of the municipal entity is more complicated, but having its own advantages.

Discussions.

In the literature, there was a strong opinion that the representative body is an elected collegiate body consisting of deputies. It is based on constitutional provisions and norms of sectoral legislation denoting the deputy corps as a representative body (parliament or an elected body of local self-government). At the same time, a representative function in public law can be exercised by any elected body (elected official). The term “representation” means the activity of one person on behalf of others. This understanding of the term is present in private law; it is also applicable to the characterization of public law relations.

This legal structure of representation has been developed in civil law in sufficient details, but it can also be partially used in constitutional law. Indeed, the basis of this relationship is the ability to use the services of other persons. In the literature, it is noted that representatives are resorted to the services of the sake of taking advantage of the special knowledge and experience of the representative.

In public law relations, representation is different, but its essence is the same. So, P.A. Astafichev writes: "...similar goals are characteristic of the system of popular representation, since parliamentarians have more information than ordinary citizens; they are able to more effectively realize the needs and interests of Russians thanks to their professional background" (2004). It is the parliament that is characterized as a representative body: a deputy is also the representative of voters. In fact, any person elected by the people is called to represent their interests.

The President of the Russian Federation is elected by the people, and in accordance with paragraph 4 of Article 80 of the Constitution, represents the Russian Federation within the country and in its international relations. The Constitution says that the President of Russia represents the country, but one cannot deny the fact that only the population, the people can be represented, since only they have sovereign rights, only they are the bearer of interests that require representation.

The special literature also emphasizes that in a functional sense, representative bodies are not only collegial, but also individual state bodies and local governments (See: T. Zrazhevskaya, 2001:27). According to S.G. Solovyov, the representative function is performed "first and foremost" by the representative body of local self-government; however, the head of a municipal formation "also represents the interests of the local population" (See: S.G. Soloviev, 2004:34). In North America, at the local level, the institute of the city manager has become widespread (Siegel, D., 2015:5).

Let us leave, without comment, the position according to which there is the first and other "queues" of representative function and representation level. If we talk about the status of an elected body, the Federal Law on Local Self-Government calls the head of the municipal entity the highest official, which suggests its supremacy in the system of municipal bodies. On the other hand, to what extent is the "representativeness" of a particular elected body public higher or more significant? The statement of such a question hardly matters, but it is important to identify the object of representation (whom the deputy represents, the collegial body, the elected official) because of the

need of clarification of the relationship “a person represented - the representative”. Such a relationship not only implies the empowerment of the representative, but also his responsibility for the actions performed in the interests of the actions submitted. This problem is of not only political, but also legal character.

The peculiarity of the relations under consideration at the local government level is also driven by the fact that there are two possible ways to occupy the highest position in a municipal entity: through nation-wide elections and elections by a representative body (council, assembly, etc.) from among its members. In the second case, the election is performed from among the deputies who have already passed the election procedure; i.e., having the status of an elected person – a deputy.

In this version, it turns out, that being already a representative of a certain part of voters, a person receives another status through a vote of all deputies; i.e., the head of the municipal entity. Moreover, he/she retains the powers of a deputy, since he/she is the chairman of a representative body, and he/she loses his/her position in the event of early termination of powers of a representative body in the municipal entity, may be recalled by voters as a deputy, what also leads to the early termination of powers of the head of a municipal entity.

A publicly elected head of the municipal entity receives a mandate to exercise authority from the hands of voters and is a representative of the people. Sometimes, it is possible to meet the opinion that the people transfer power or a part of power, the right to power to elected persons. A.A. Vorotnikov, for example, believes that part of the power is transferred to “elected politicians - deputies, presidents, governors” (Vorotnikov A.A., 2002:87).

It is difficult to argue about how much of the power is transferred to an elected person, more importantly, how much authority is it vested in, how does it exercise these powers and to whom is it responsible for their implementation? In this regard, article 226 of the Ontario Municipal Act accepted in Canada (Ontario Municipal Act, 2001) (Service Ontario; Municipal Act, 2015) is

interesting, in which an attempt is made to clarify the status of the head of the council as the “highest executive person” of a municipal entity who “assists in the realization of the goals of municipal government...”, but as is noted by Tindal R. and Tindal S., this formulation is too vague, but the head of the council does not receive practical powers for the implementation of the above functions, at least in the territory where the Ontario Municipal Act is in effect (Tindal R., Tindal S., 2009).

Another important aspect of the activity of an elected person is to reveal whose interests are pursued in the exercise of public authority, and how the activities of an elected person contribute to solving the urgent problems that arise in the process of life of a particular settlement in a district or city.

In summary, the head of the municipal entity is the chairman of the municipal representative body, and therefore, has the legitimate right to speak on behalf of the voters who formed the deputy composition of this body.

As for personal representation, he/she was elected by a part of the population of his/her district (using the majority electoral system), but by virtue of his position (chairman) represents the interests of the entire population of the municipal entity.

Obviously, when voting in a representative body, not all deputies can support the candidacy of the mayor. The charter of the municipal entity "The City of Naberezhnye Chelny", as a rule, provides for its election by a majority vote (Article 34), but this in no way indicates that he/she is not a representative of that part of the deputies who did not vote for the elected mayor.

The charters of the municipal entity contain norms aimed at ensuring equal representation of all residents regardless of occupation, political affiliation, and social status.

The Charter of the city of Kazan contains a number of prohibiting norms, the purpose of which is to exclude the direct lobbying of the interests of certain individuals and legal entities.

In particular, a mayor cannot engage in business activities. It is prohibited for him/her to be a member of the management of a commercial organization (unless otherwise provided by federal laws or if in the procedure established by a municipal legal act in accordance with federal laws and laws of the subject of the Russian Federation, he/she is not tasked to participate in the management of this organization). The ban applies to the occupation in other paid activities, with the exception of teaching, research and other creative activities. At the same time, teaching, research and other creative activities cannot be financed exclusively by foreign funds, international and foreign organizations, foreign citizens and stateless persons, unless otherwise provided by an international treaty of the Russian Federation or the legislation of the Russian Federation.

In accordance with the Charter of the municipal entity, the Mayor of the city of Kazan may not be a member of the governing bodies, trustees or supervisory boards, other bodies of foreign non-profit non-governmental organizations and their structural subdivisions operating in the Russian Federation, unless otherwise provided by an international treaty of the Russian Federation or the legislation of the Russian Federation.

CONCLUSIONS.

We note the following advantages of election of the head of a municipal entity by a representative body. First, in order to qualify for the position of head of the municipal entity, a person must go through the procedure of primary elections to the representative body of the municipal entity. Only having received the status of a deputy, the person can count on support of the deputies and the election as the head of the municipal entity. Thus, the candidature of the head twice passes the procedure for assessing personal and business qualities: an assessment by voters and an assessment by fellow deputies. If the former can make a mistake (for many reasons, including the weakness of other candidates or the use of populist slogans), the latter will evaluate the qualities of the deputies

who are candidates for the post of head of the municipal entity in more balanced and professional manner.

Secondly, the head elected by the representative body has a closer link in the “represented - representative” line. In the exercise of his/her powers, the head of the municipal entity should be guided not only by his/her own idea of what is due, but also by the opinion of his/her colleagues in the deputy corps, which reflect a wider range of opinions.

Deputies are bounded with their voters, working with complaints, suggestions and statements received from the public, what helps to delve deeper into the problems of the inhabitants of the settlement. The collective assessment of the representative body of a particular situation in the decision making encourages the head to listen to the opinions of deputies. And this is a manifestation of the indirect influence of the inhabitants, the strengthening of relations in the line of representation.

A number of authors wrote about the preference of the second option for electing the head of the municipal entity before the adoption of the Federal Law on Local Self-Government of 2003; for example, exploring the history of the organization of local self-government, E.G. Animitsina and A.T. Tertyshtny argued that this model does not conflict with the Russian experience of self-government, or with the experience of foreign countries. The variants under which the head of a municipal entity heading a representative body, is included in its composition, most closely corresponds to the thesis about the representation in this region of interests, views, and attitudes of various layers and groups (Animitsina E.G.; Tertyshtny A.T., 1998:218).

The representative nature of the powers of the head of a municipal entity is manifested in his/her responsibility. According to Part 5, Article 36 of the Federal Law No. 131-FZ, the head of a municipal entity is controlled by and accountable to the population and the representative body of

the municipal entity. Article 71 of the said law allows for the establishment of a procedure for the responsibility of the head by means of a public recall.

The possibility of forcible termination of powers is an integral part of the relations of representation. The represented person has the right to change the conditions of representation or to deprive of the authority of his/her representative altogether, and to replace him.

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