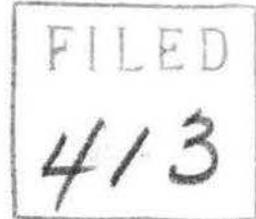


December 31, 1964



Honorable E. J. Cantrell  
Representative, 6th District  
St. Louis County  
3406 Airway  
Overland 14, Missouri

Dear Representative Cantrell:

This letter is in answer to your request for an opinion on the question of whether a city of the fourth class may by an ordinance establish minimum housing standards.

A city of the fourth class has limited powers. It can exercise only such powers as are expressly granted by statute or those necessarily incident to or implied by the powers expressly granted, *City of Richland v. Null*, 194 Mo. App. 176, 185 S.W. 250.

With respect to housing standards and related subjects, we find the following statutory authority granted to fourth class cities. Section 79.370, RSMo. 1959, provides that the Board of Aldermen may by ordinance secure the general health by:

"\* \* \* any measure to regulate, suppress and abate slaughterhouses, slaughtering animals, stockyards, soap and other factories, pig pens, cow stables, and other stables and dairies, and to remove the same, and to regulate or prevent the carrying on of any business which may be dangerous or detrimental to the public health, or the manufacturing or rendering of articles obnoxious to the health of the inhabitants; and to pass ordinances for the prevention of nuisances and their abatement."

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This section does not grant to the city the power to declare that a particular condition is a nuisance which is not so at common law or by statute. City of Sturgeon v. Wabash Railroad Company, 223 Mo. App. 633, 17 S.W.2d 616.

Under Section 79.410, RSMo. 1959, the board of aldermen may:

"\* \* \* prohibit and prevent all encroachments into and upon sidewalks, streets, avenues, alleys and other public places of the city, and may provide for the removal of obstructions from the sidewalks, curbstones, gutters and crosswalks, at the expense of the owners or occupants of the ground fronting thereon, or at the expense of the person causing the same; they may also regulate the planting of shade trees, erecting of awnings, hitching posts, lamp posts, awning posts, telephone, telegraph and electric light poles, and making of excavations through and under the sidewalks or in any public street, avenue, alley or other public place within the city. \* \* \*"

Section 79.450, RSMo. 1959, provides in part:

"3. The board of aldermen may also regulate and control the construction of buildings, the construction and cleaning of fireplaces, chimneys, stoves and stovepipes, ovens, boilers, kettles, forges or any apparatus used in any building, manufactory or business which may be dangerous in causing or promoting fires, and may provide for the inspection of the same.

"4. The board of aldermen may also provide by ordinance limits within which no building shall be constructed except of brick or stone or other incombustible materials, with fireproof roofs, and impose a penalty for the violation of such ordinance, and may cause buildings commenced, put up or removed into such limits in violation of such ordinance, to be removed or abated."

Section 89.020, RSMo. 1959, reads:

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"For the purpose of promoting health, safety, morals or the general welfare of the community, the legislative body of all cities, towns, and villages is hereby empowered to regulate and restrict the height, number of stories, and size of buildings and other structures, the percentage of lot that may be occupied, the size of yards, courts, and other open spaces, the density of population, the preservation of features of historical significance, and the location and use of buildings, structures and land for trade, industry, residence or other purposes."

Section 89.040, RSMo. 1959, provides:

"Such regulations shall be made in accordance with a comprehensive plan and designed to lessen congestion in the streets; to secure safety from fire, panic and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population; to preserve features of historical significance; to facilitate the adequate provision of transportation, water, sewerage, schools, parks, and other public requirements. Such regulations shall be made with reasonable consideration, among other things, to the character of the district and its peculiar suitability for particular uses, and with a view to conserving the values of buildings and encouraging the most appropriate use of land throughout such municipality."

The term "minimum housing standards" is a little vague and we are not sure just what you have in mind and of course we have not seen the proposed ordinance, yet it would appear that unless the ordinance carries out one of the powers expressed in the aforementioned statutes it would seem doubtful that such an ordinance would be valid as authorized by statute. We do not express an opinion as to the validity of any particular proposed ordinance.

Very truly yours,

THOMAS F. EAGLETON  
Attorney General

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