

COUNTY COURT:
CITIES, TOWNS & VILLAGES:
INCORPORATION OF CITIES:

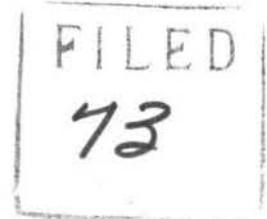
A petition to incorporate a city or town under Section 72.080, RSMo 1969, may be filed at any time but a city or town may not be incor-

porated under this section unless and until the county court is satisfied that the petition is signed by a majority of the taxable inhabitants at the time the town or city is declared to be incorporated.

OPINION NO. 73

February 11, 1971

Honorable William Raisch
Representative, District 48
Room 236D, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Raisch:

Your request for an opinion presents the question whether under Section 72.080, RSMo 1969, a petition to incorporate a city or town must be presented to the county court within a certain time after the signatures are placed on the petition.

Section 72.080, RSMo 1969, is as follows:

"Any city or town of the state not incorporated may become a city of the class to which its population would entitle it under this chapter, and be incorporated under the law for the government of cities of that class, in the following manner: Whenever a majority of the inhabitants of any such city or town shall present a petition to the county court of the county in which such city or town is situated, setting forth the metes and bounds of their city or town and commons and praying that they may be incorporated, and a police established for their local government, and for the preservation and regulation of any commons appertaining to such city or town, and if the court shall be satisfied that a majority of the taxable inhabitants of such town have signed such petition, the court shall declare such city or town incorporated, designating in such order the metes and bounds thereof, and thenceforth the inhabitants within such bounds shall be a body politic and incorporate, by the name and style of 'the city of,', or 'the town of,',

Honorable William Raisch

and the first officers of such city or town shall be designated by the order of the court, who shall hold their offices until the first general election of officers, as provided by law and until their successors shall be duly elected and qualified."

In this statute, the legislature has set out the conditions upon which cities and towns may be incorporated in their respective classes. It is the duty of the county court to see that these conditions are met. The authority of the county court to declare a city or town incorporated is conferred only ". . . Whenever a majority of the inhabitants of any such city or town shall present a petition to the county court of the county in which such city or town is situated, . . ."

It is apparent, therefore, that a petition would not have operative effect under Section 72.080 unless and until it is presented to the county court. It is equally apparent that the presentation of the petition to the county court is a condition precedent to the vesting of jurisdiction in the county court to declare a city or town incorporated under this statute.

With respect to the timeliness of the presentation of the petition, the statute provides that the county court ". . . shall be satisfied that a majority of the taxable inhabitants of such town have signed such petition, . . ."

It appears, therefore, that a petition to incorporate a city or town under Section 72.080, RSMo 1969, must be signed by persons who are taxable inhabitants at the time the city or town is declared to be incorporated.

In *In re City of Uniondale*, 225 S.W. 985, 987 (Mo. 1920), the Supreme Court of Missouri stated the law as follows:

"The procedure prescribed is brief and simple:

'Whenever a majority of the inhabitants * * * shall present a petition to the county court, * * * praying that they may be incorporated, * * * if the court shall be satisfied that a majority of the taxable inhabitants * * * have signed such petition, the court shall declare such city or town incorporated. * * *'

No notice of any kind is required. It is not necessary that the petition shall have been on file for any length of time, or even that it

Honorable William Raisch

shall have been filed at all, before being taken up for consideration by the court. Upon its presentation the court may immediately proceed to determine whether it is signed by a majority of the taxable inhabitants, and, if it is satisfied that such is the case, may make its order of incorporation without further ado. Not only, therefore, is notice not required, but the statute does not contain the slightest implication that the taxable inhabitants of the territory sought to be incorporated, who do not sign the petition, may appear and contest it. . . ."

Also, In re City of Duquesne, Missouri, 313 S.W.2d 65, 71 (Spr.Ct.App. 1958), the court stated:

"The county court is the agency through which legislative authority to establish municipalities is provided. It can only ascertain the facts required by the statute. § 72.080 RSMo 1949, V.A.M.S., provides what facts the county court must find in ordering the incorporation of a city of the fourth class. The statute states that any unincorporated city or town may file a petition with the court. The Uniondale case specifically says that all that is required is that a petition be filed setting out the metes and bounds of the proposed incorporation and the commons, signed by a majority of the taxpaying citizens. And if the county court finds such facts, it is mandatory that the court incorporate the town. . . ."

It appears, therefore, that the statute has not prescribed any time limit for presentation of the petition to the county court after the signatures have been placed on the petition.

CONCLUSION

It is, therefore, the opinion of this office that a petition to incorporate a city or town under Section 72.080, RSMo 1969, may be filed at any time but a city or town may not be incorporated under this section unless and until the county court is satisfied that the petition is signed by a majority of the taxable inhabitants at the time the town or city is declared to be incorporated.

Honorable William Raisch

The foregoing opinion, which I hereby approve, was prepared by my Assistant, L. J. Gardner.

Yours very truly,

A handwritten signature in black ink, reading "John C. Danforth". The signature is written in a cursive style with a large, sweeping initial "J".

JOHN C. DANFORTH
Attorney General