

CITIES, TOWNS & VILLAGES:

The alternative procedure authorized in Section 72.085, RSMo 1969, for incorporating cities in any second class county or first class county having a charter form of government, may not be used in place of the procedure prescribed in Section 72.100, RSMo 1969, for the incorporation of unincorporated areas situated on the county line and in two counties.

OPINION NO. 126

April 12, 1971

Honorable Donald J. Gralike
Representative, District 49
Room 301, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Gralike:

This is in response to your request for an opinion concerning the procedure to be followed for the incorporation of an unincorporated area located in part in St. Louis County and in part in a second class county.

In your opinion request you point out that the procedure for incorporating cities and towns situated on a county line and in two counties is provided in Section 72.100, RSMo 1969, and an alternative procedure for incorporating areas in second class counties and first class counties having a charter form of government is provided in Section 72.085, RSMo 1969. Your basic question is whether use of the alternative procedure under Section 72.085 is restricted to the situation where all of the area to be incorporated is located in one county, or whether the alternative procedure may be used for the incorporation of areas located partly in a first class county having a charter form of government and partly in a second class county.

Section 72.085, RSMo 1969, is as follows:

"1. Other provisions of law notwithstanding, any unincorporated area of land in any second class county or first class county having a charter form of government may become a city of the class to which its population would entitle it, as provided in this chapter, and be incorporated in the manner provided by this section.

"2. Incorporation proceeding may be instituted by the filing of a petition with the governing

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body of such county. The petition shall be signed by ten percent of the registered voters in the area, shall describe, by metes and bounds, the area to be incorporated and be accompanied by a plat thereof, shall state the approximate population and the assessed valuation of all real and personal property in the area and shall state facts showing whether or not the incorporation is reasonable and necessary to the proper development of the area, the ability of the proposed city to furnish normal municipal services in the area within a reasonable time after its incorporation is to become effective and whether or not the incorporation is in the interest of such county as a whole.

"3. After public hearing and review of the proposed incorporation, the governing body of the county may, by ordinance or order, approve or disapprove the petition in whole or in part, with or without amendment, including, but not limited to, increasing or decreasing the area to be incorporated, and upon such approval shall submit the proposal for incorporation to the qualified voters in the area proposed to be incorporated. The governing body of the county in such ordinance or order shall set the date for such election at any special, primary or general election not less than sixty days after the enactment of the ordinance or order. The election official or officials in charge of elections in such county shall submit the proposed incorporation at the election by ballot substantially in the form set forth in the ordinance or order calling the election. If the proposed incorporation is approved by a majority of the voters voting thereon in the area to be incorporated, the city shall thereupon be incorporated. If a majority of those voting thereon vote against the incorporation the proposal shall be defeated and no new petition for incorporation of the same or substantially the same area may be filed until one year after the election. Within sixty days after any election approving an incorporation the governing body of the county shall by ordinance declare that city incorporated, shall designate the metes and bounds, the class and

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the name thereof and shall designate the officers of the city who shall hold office until the first general election of officers, as provided by law and until their successors shall be duly elected and qualified. Thenceforth such city shall be a body politic and corporate, possessed of all the powers and subject to all laws pertaining to its class. Failure of the governing body of the county to act upon any petition for incorporation within ninety days after it has been filed shall be deemed a denial thereof."

You will recall that in our Opinion No. 74 issued to you March 17, 1966, we pointed out that Section 72.085 can be interpreted and harmonized with the language of Section 72.080.

The General Assembly has provided for the incorporation of any city or town situated on the county line and in two counties by Section 72.100, RSMo 1969, as follows:

"Provided, that when any city or town is or may be situated on the county line, and in two counties, the petition shall be signed by a majority of the taxable inhabitants of such city or town in each county, and presented to the county court of each county, and designating which of the two county courts shall designate the officers therefor, and if the county court of each county declares such city or town incorporated, the inhabitants thereof shall thenceforth be a body politic and incorporate, by the name and style of 'the city of,', or 'the town of,', and provided further, that appeals taken from the decision of the mayor, judge or other officer before whom any cause is tried, acting for said city or town, may be sent to the circuit court of either county wherein such city or town is situated, as may be specified in the order granting such appeal."

Your present question then is whether Section 72.085 which authorizes a method alternative to that prescribed in Section 72.080 for the incorporation of cities and towns located in one county also authorizes a method alternative to that prescribed in Section 72.100 for the incorporation of cities and towns located in more than one county.

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It is to be observed that paragraph 1 of Section 72.085 specifies ". . . any unincorporated area of land in any second class county or first class county having a charter form of government. . . ." Ordinarily, the use of the word "or" in a statute is a disjunctive that marks an alternative generally corresponding to "either." *Dodd v. Independent Stove & Furnace Co.*, 51 S.W.2d 114. Therefore, the unincorporated area described in Section 72.085 must be located either in any second class county or in a first class county having a charter form of government. That is to say, it may be located in either one county or the other but cannot be located in both counties.

Additional support for this view is found in the other language of the statute. Paragraph 2 of Section 72.085 provides that incorporation proceedings may be instituted by the filing of a petition with "the governing body of such county." Paragraph 3 of the same section provides that "the governing body of the county" may approve or disapprove the petition and upon approval shall submit the proposal for incorporation to the qualified voters in the area proposed to be incorporated. It further provides that "the governing body of the county" shall set the date for such election and the election officials "in such county" shall submit the proposed incorporation at the election by ballot in the form required. Within sixty days after any election approving an incorporation "the governing body of the county" shall by ordinance declare the city incorporated. Failure of "the governing body of the county" to act upon any petition for incorporation within ninety days after it has been filed shall be deemed a denial thereof.

Looking to the context of the statute as a whole, we find no language or provision therein from which an implication necessarily arises that it was the legislative intent to permit the alternative procedure to be used when the area to be incorporated is located in two different counties. It is apparent, therefore, that Section 72.085 does not contemplate action by the governing body of more than one county or by each county as provided in Section 72.100.

CONCLUSION

It is, therefore, the opinion of this office that the alternative procedure authorized in Section 72.085, RSMo 1969, for incorporating cities in any second class county or first class county having a charter form of government, may not be used in place of the procedure prescribed in Section 72.100, RSMo 1969, for the incorporation of unincorporated areas situated on the county line and in two counties.

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

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, prominent initial "J".

JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 74
3-17-66, Gralike