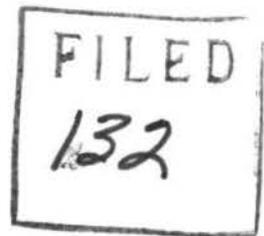


June 3, 1971

OPINION LETTER NO. 132
Answer by Letter (Tettlebaum)



Honorable Howard E. Hines
State Representative
Twenty-first District
Room 412, Capitol Building
Jefferson City, Missouri 65101

Dear Representative Hines:

This is in response to your request for an official opinion as follows:

"Please furnish an opinion on the points as follows relative to annexation of the unincorporated land areas into the incorporated limits of the constitutional charter city in Jackson County, Missouri.

"1. What limit of time may such a city, legally hold incorporated areas under a valid holding ordinance?

"2. May such holding ordinance be amended and renewed at numerous times to extend the holding ordinance time?

"3. What effect would the placing of an overlapping holding ordinance, by a second city make upon an already existing valid holding ordinance held by another city?"

The applicable section of the Charter of the City of Independence, Missouri reads as follows:

Honorable Howard E. Hines

"Section 1.4. Powers of the city: Certain powers specified. Without limitation of the powers conferred upon the city by section 1.3 of this article or by any other provision of this charter, the city shall have power:

* * *

"(37) To extend or diminish the limits of the city by ordinance passed by the council and approved by a vote of a majority of the registered qualified electors voting on the question at an election; provided that approval by the registered qualified electors shall not be required for a holding ordinance; . . ."

We understand the term "holding ordinance" to mean an ordinance passed by the legislative body of a constitutional charter city setting a date for submission to the voters of an amendment to its charter extending its borders. The applicable procedure is set out in Article 6, Section 20, Missouri Constitution 1945, which provides:

"Amendments of any city charter adopted under the foregoing provisions may be submitted to the electors by a commission as provided for a complete charter. Amendments may also be proposed by the legislative body of the city or by petition of not less than ten per cent of the registered qualified electors of the city, filed with the body or official having charge of the city elections, setting forth the proposed amendment. The legislative body shall at once provide, by ordinance, that any amendment so proposed shall be submitted to the electors at the next election held in the city not less than sixty days after its passage, or at a special election held as provided for a charter. Any amendment approved by a majority of the qualified electors voting thereon, shall become a part of the charter at the time and under the conditions fixed in the amendment; and sections or articles may be submitted separately or in the alternative and determined as provided for a complete charter."

In the case of State ex rel. Kansas City v. North Kansas City, 228 S.W.2d 762, 360 Mo. 374 (1950), the court said:

Honorable Howard E. Hines

"The powers which relator could exercise, through the constitutional grant of the right to adopt and amend its charter were such 'powers which the people of the city delegate to it under its charter, if unrestrained by constitutional limitation.' *Kansas City v. Frogge*, 352 Mo. 233, 176 S.W.2d 498, 499, 501. And by Sec. 5 of Article I of its charter the people of relator city delegated to relator the power to 'extend its limits by amendment of this charter in the manner provided by the Constitution', etc.

"Whatever may be the rule in any other jurisdiction, or however any court in some other jurisdiction may have construed some other constitution, we hold that under the Constitution of Missouri relator has a constitutional grant of power and authority to extend its city limits by amendment of its charter in compliance with Sec. 20 of Article VI of the Missouri Constitution of 1945. Specific legislative authority to extend relator's limits is unnecessary. It was legally sufficient for adoption that a majority of the qualified electors voting thereon approved relator's proposal to amend its charter to extend its boundaries. The approval by a majority met constitutional requirements."
Id. at 771.

Therefore, it is clear that the people of Independence by approving Section 1.4 (37) delegated to the City of Independence the right to institute the practice above described.

Generally, the procedures followed by the city attempting to annex territory contiguous thereto are presumed reasonable and valid until challenged. State ex rel. Kansas City v. North Kansas City, loc. cit. at 774. The reasonableness and validity of specific annexation procedures may be challenged by a municipality seeking to annex the same or portions of the same territory in question. It has long been held in Missouri that the municipality obtaining "prior jurisdiction" in proceedings to annex territory has exclusive jurisdiction until such annexation is decided. State ex inf. Goodman, ex rel. Crewdson v. Smith, 331 Mo. 211, 53 S.W.2d 271, 272. It is for the courts to decide whether the act of a city in continually extending the date of the election to amend its charter constitutes a valid claim under the doctrine of "prior jurisdiction" to the territory to be annexed. In the

Honorable Howard E. Hines

case of Emerson Electric Manufacturing v. City of Ferguson, 376 S.W.2d 643 (St.L.Ct.App. 1964), in considering the doctrine of "prior jurisdiction" the court said:

"Under this doctrine where two public bodies each claim jurisdiction over the same territory by virtue of annexation proceedings, the public body which takes the first valid step to accomplish annexation has the superior claim regardless of which one completes its proceedings first. State ex rel Industrial Properties Inc. v. Weinstein Mo.App. 306 S.W.2d 634. . . ." Id at 646.

In addition, it has been held by Missouri courts that the mere introduction of an ordinance pursuant to the initiation of an annexation proceeding gave the city introducing said ordinance "prior jurisdiction" over a neighboring municipality. City of Joplin v. Village of Shoal Creek Drive, 434 S.W.2d 25, 29-30 (Spr. Ct.App. 1968).

It is therefore, the view of this office that in connection with an annexation by a city of territory contiguous thereto, the validity and reasonableness of both the annexation and steps taken to effect said annexation as well as the question of the priority of jurisdiction over the territory to be annexed are questions to be decided by the court in each individual case.

Very truly yours,

JOHN C. DANFORTH
Attorney General