

COUNTIES: A county of the first class having
COUNTY PURCHASES: a charter form of government may
CONSTITUTIONAL CHARTER COUNTIES: not adopt an ordinance which pur-
ports to establish a minimum mone-
tary requirement for advertising for bids for supplies, equipment,
materials or services greater than that established by Section 50.
660, RSMo 1969.

OPINION NO. 176

December 21, 1973

Honorable Donald L. Manford
State Senator, District 8
Room 425, Capitol Building
Jefferson City, Missouri 65101



Dear Senator Manford:

This opinion is in response to your question asking whether counties of the first class having a charter form of government may set the requirement for advertising for public bids at an amount greater than that required by statute. You have advised that a county ordinance of Jackson County provides that advertising for bids for supplies and contractual services shall not be required when the estimated cost shall not exceed \$2,000.

Article VI, Section 18(b) provides:

"The charter shall provide for its amendment, for the form of the county government, the number, kinds, manner of selection, terms of office and salaries of the county officers, and for the exercise of all powers and duties of counties and county officers prescribed by the Constitution and laws of the state."
(Emphasis added)

Section 50.660, RSMo 1969, provides:

"All contracts shall be executed in the name of the county by the head of the department or officer concerned, except contracts for the purchase of supplies, materials, equipment or services other than personal made by the officer in charge of purchasing in any county having the officer. No contract or order imposing any financial obligation

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on the county is binding on the county unless it is in writing and unless there is a balance otherwise unencumbered to the credit of the appropriation to which it is to be charged and a cash balance otherwise unencumbered in the treasury to the credit of the fund from which payment is to be made, each sufficient to meet the obligation incurred and unless the contract or order bears the certification of the accounting officer so stating; except that in case of any contract for public works or buildings to be paid for from bond funds or from taxes levied for the purpose it is sufficient for the accounting officer to certify that the bonds or taxes have been authorized by vote of the people and that there is a sufficient unencumbered amount of the bonds yet to be sold or of the taxes levied and yet to be collected to meet the obligation in case there is not a sufficient unencumbered cash balance in the treasury. All contracts and purchases shall be let to the lowest and best bidder after due opportunity for competition, including advertising the proposed letting in a newspaper in the county with a circulation of at least five hundred copies per issue, if there is one, except that the advertising is not required in case of contracts or purchases involving an expenditure of less than five hundred dollars, in which case notice shall be posted on the bulletin board in the courthouse. It is not necessary to obtain bids on any purchase in the amount of one hundred dollars or less made from any one person, firm or corporation during any period of thirty days. All bids for any contract or purchase may be rejected and new bids advertised for. Contracts which provide that the person contracting with the county shall, during the term of the contract, furnish to the county at the price therein specified the supplies, materials, equipment or services other than personal therein described, in the quantities required, and from time to time as ordered by the officer in charge of purchasing during the term of the contract, need not bear the certification of the accounting officer, as herein provided; but all orders for supplies, materials, equipment or services

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other than personal shall bear the certification. In case of such contract, no financial obligation accrues against the county until the supplies, materials, equipment or services other than personal are so ordered and the certificate furnished."

It is settled that a charter county remains a legal subdivision of the state and as such is charged with the performance of state functions as are other counties, notwithstanding its charter. Casper v. Hetlage, 359 S.W.2d 781 (Mo. 1962); State ex inf. Dalton ex rel. Shepley v. Gambel, 280 S.W.2d 656 (Mo. banc 1955). The primary function of the charter is to vest the management of county business in county agencies as provided by the charter or ordinance rather than in a county court. Casper v. Hetlage, *supra*; State ex rel. Kowats v. Arnold, 204 S.W.2d 254, 256 (Mo. banc 1947); Bradford v. Phelps County, 210 S.W.2d 996, 999 (Mo. 1948); Article VI, Section 18(a), Constitution of Missouri (1945). However, a charter county may enact its own legislation governing matters which are primarily of local concern. State ex inf. Anderson ex rel. Weinstein v. St. Louis County, 421 S.W.2d 249, 254 (Mo. banc 1967); State ex rel. O'Brien v. Roos, 397 S.W.2d 578, 582 (Mo. 1965).

The central issue posed by your question is whether the purchase of supplies and services by a charter county is a matter primarily of local concern or a state governmental function.

In Hellman v. St. Louis County, 302 S.W.2d 911, 917 (Mo. 1957), the Supreme Court assumed without discussion that Section 50.660 was applicable to charter counties. Additionally, a companion statute, Section 50.640, RSMo 1969, has been construed to be applicable to St. Louis County, a charter county, with respect to the determination of the budget and number of employees of the circuit court and circuit clerk. State ex inf. Anderson ex rel. Weinstein v. St. Louis County, *supra*. The court determined that the policy of the state required that the circuit court be permitted to determine the number of personnel reasonably necessary to carry on the functions of the court.

Chapter 12, RSMo 1969, the voting machine law, was held applicable to St. Louis County, a charter county, despite a conflicting charter provision authorizing the county council to designate the type and number of voting machines to be purchased and used. State ex rel. Cole v. Matthews, 274 S.W.2d 286 (Mo. banc 1954). The conduct of elections was determined to be a state function in scope and this governmental function extended to the designation of the type and number of voting machines.

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This office has previously determined that a prosecuting attorney of a constitutional charter county may be required by statute to devote his full time and energy to his duties. See Opinion No. 234, issued March 29, 1966, to Maurice Schechter.

We have concluded that expenditures of public funds for supplies and services is a matter of statewide concern. Any construction which would permit a charter county to buy supplies, equipment, materials or services in an amount contrary to the provisions of Section 50.660 without the necessity of advertising for bids would be plainly contrary to the legislative intent. Accordingly, the ordinance enacted by the county legislature of Jackson County which purports to establish the minimum bid requirement for supplies and services conflicts with the county budget law, Section 50.660, RSMo 1969, and may not be permitted to stand.

CONCLUSION

It is the opinion of this office that a county of the first class having a charter form of government may not adopt an ordinance which purports to establish a minimum monetary requirement for advertising for bids for supplies, equipment, materials or services greater than that established by Section 50.660, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Donald R. Bird.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 234
3-29-66, Schechter