TOWNSHIP ORGANIZATION LAW - Right to repeal enabling act carrying out Sec. 8 of the Constitution of Mo. and filling vacancies in office caused by such repeal.

JEFFERSON CITY, MISSOURI,
January 13, 1933.

Hon. W.H. Meredith,
Speaker House of Representatives,
Jefferson City, Mo.

FILED
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Dual

Dear Sir:

The question to be answered by an opinion, as I understand, is:

> "Can Chapter 86 of the R.S. of Mo. 1929 be repealed without violating the provisions of Secs. 8 and 9 of Art. 9 of the Constitution of the State of Missouri, and if so, how are the vacancies in office caused by the repeal of Chapter 86 to be filled."

Sec. 8 of Art. 9 of the Constitution of the State of Missouri with reference to the adoption of township organization in the State of Missouri provides as follows:

> "Township organization adopted, how - county justices.
> The General Assembly may provide, by general law, for township organization, under which any county may organize whenever a majority of the legal voters of such county, voting upon that proposition, at any general election, shall so determine; and whenever any county shall adopt township organization, so much of this Constitution as provides for the management of county affairs, and the assessment and collection of the revenue by county officers, in conflict with such general law for township organization, may be dispensed with, and the business of said county, and the local concerns of the several townships therein, may be transacted in such manner as may be prescribed by law: Provided, that the justices of the county court in such case shall not exceed three in number."

The whole matter is to be determined upon the question of whether or not Sec. 8 of Art. 9 of the Constitution is addressed to the Legislature or to the courts, or in other words, whether or not the constitutional provision can be put into effect of its own force, meaning and provisions, or whether legislation is necessary in aid thereof.

The case of State ex rel Burns vs. Gibson, 195 Mo. 251 involved the question of the validity of the adoption of the township organization law in Linn County, Mo. under the constitutional provision above quoted. There arose in that case substantially the same question that

that is presented here. The court at P. 260 of the opinion covered the entire situation at hand where it said:

> "The test in such cases is, Can the Constitution be enforced without the aid of legislation? "The question in every case is whether the language of a constitutional provision is addressed to the courts or the Legislature. Does it indicate that it was intended as a present enactment, complete in itself as definitive legislation, or does it contemplate subsequent legislation to carry it into effect? This is to be determined from a consideration both of the language used and of the intrinsic nature of the provision itself. If the nature and extent of the right conferred and of the liability imposed are fixed by the provision itself, so that they can be determined by the examination and construction of its own terms, and there is no language used indicating that the subject is referred to the Legislature for action, then the provision should be construed as self-executing, and its language is addressed to the courts." (Willis v. Mabon, 48 Minn. l.c. 150)
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> That this provision was addressed to the Legislature and not to the courts is, we think, too plain for argument. It starts out by saying: "The General Assembly may provide, by general law, for township organization, whenever a majority of the legal voters of such county, voting at any general election, shall so determine," thus clearly indicating that it was not intended for a present enactment complete in itself, but that legislation would be required to make it operative. It makes no provision whatever for holding the election, who shall be qualified to vote at it, or the form of the ballot. It would be difficult to indicate by stronger language than that quoted, that the framers of the Constitution intended that there should be legislation in order to put the provision in force, otherwise than by express words to that effect."
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> To the same effect is State ex inf. vs. Munn, 201 Mo. 214.

Attention is directed to the permissive term or use of the word "may" as used in Sec. 8 above quoted; that is to say it is not

mandatory upon the General Assembly to provide for township organization. The General Assembly may or may not pass an enabling act carrying out the provisions of Sec. 8. Even if the Constitution had used the word "shall" instead of the word "may" the General Assembly would not be compelled to carry out the constitutional demand. The principle of law in that respect is stated in

Fahey vs. Hackmann, 291 Mo. 351

where was involved the question as to whether laws passed by the General Assembly in pursuance of a "shall" mandate in the Constitution was referable for a vote. The court, page 379 of the opinion holds:

> "It does not and cannot follow that the laws passed in pursuance of these numerous "shalls" are not referable laws, under Section 57 of Article IV. It is true that the use of this word emphasizes the fact that the framers of the amendment desired legislative action, but its use cannot compel the Legislature to act. Such Legislature might refuse to act, and the only remedy of the people who framed the amendment would be to (1) elect a different Legislature, or (2) to initiate and adopt the necessary laws."

Whether the General Assembly would in the first instance pass an enabling act to carry out the provisions of Section 8 of Article 9 of the Constitution is obviously addressed to the wisdom and discretion of that body, and it necessarily follows if upon further consideration and observation of the results of the operation of the township organization law the General Assembly concludes that its action in passing the enabling act was unwise legislation, that body would have the same right to repeal the enabling act as it had to enact it.

Upon the repeal of the enabling act all laws in force in this state in relation to counties not having township organization shall immediately take effect and be in force in such county as provided in Section 9 Article 9 of the Constitution of the State of Missouri.

Thereupon, the offices held by the respective officers under the township organization law would be vacated and the various county offices for the administration of county affairs would be unoccupied and vacant and those vacancies would be filled as any other vacancies in county offices as provided by the Constitution and laws of the State of Missouri.

Very truly yours,

GILBERT LAMB,
Assistant Attorney General

APPROVED:

Attorney General

GL:AH