

- F =
- I. RELATING TO CONSTRUCTION OF SECTION 9044 AS AMENDED ^{by}
LAWS OF 1933.
- II. RELATING TO AUTHORITY OF CITIES TO PASS ORDINANCE EXCEEDING
THE CHARTER RIGHTS IN CONFLICT WITH STATE LAWS.

9-12
September 7th, 1934



Hon. S. Ray Sweeney
109 N. Market
Warrensburg, Missouri

Dear Sir:

We acknowledge receipt of your letter of August 17th
in which you state and inquire as follows:

"I am writing you for an interpretation of
Senate Bill #123 amending section #9044 article
2 chapter 52 Statutes of Missouri passed at
the 1933 General Assembly and signed by the
Governor about April 9, 1933.

This amendment was suggested and passed be-
cause of the request of Funeral Directors to
avoid what had become a hard-ship not only on
Funeral Directors but the families they serve.

For instance warrensburg is in a certain reg-
istration district and not five miles away there
begins another registration district. This is
an actual case, a man died of Typhoid Fever,
house of three rooms five others ill in the
same house of the same trouble. The Doctor
attending is out on a call, the registrar
some where else. They want the body removed
to our Funeral Home at once. It would delay
several hours to find first the family to get
the family history, then to get the Doctor
located then to find the registrar and get the
removal permit. This law was passed as I
have said to take care of just such cases as
this so that we would not violate the law.

Another example, we are in 50 miles of Kansas
City. A family who we have served has a member
who dies in a Kansas City Hospital, they want
us to handle the case from here and not a K. C.
Funeral Director who they do not know. It is
in the middle of the night when we get to the
Hospital in K.C. the Doctor is in some other
part of the city, to comply with the law we
must find the Doctor then go to the City Hall
in the north part of the city, and we have seen

times when a clerk was not on duty there. The body most lay at the hospital until this is all done before it can be removed. That is under the old law and some say this amendment does not change it. We have been taking or removing bodies from E. C. Hospitals and leaving a blank permit at the place of death and have a friend of ours get the necessary permit the following day and mail to us, which is always before burial. I take the stand it is better to do this than to leave a body to decompose while these papers are being prepared.

Does a City have a law that overrides this state law? Thanking you in advance for your opinion I am, "

I.

Dead body may be removed from or into any registration district for the purpose of preparing such body for burial without removal permit, but no such body may be interred, deposited in vault, tomb, or cremated or otherwise disposed of until permit so to do has been issued by registrar of district in which death occurred.

Section 9044 Laws 1933, page 270 provides in part as follows:

"The body of any person whose death occurs in the state shall not be interred, deposited in a vault or tomb, cremated or otherwise disposed of, or removed from or into any registration district until a permit for burial, removal or other deposition shall have been properly issued by the local registrar of the registration district in which the death occurs. Provided, no such removal permit shall be required when a dead body is removed for the purpose of preparing such body for burial, but no such body shall be interred, deposited in a vault or tomb, cremated or otherwise disposed of until a permit so to do has been properly issued by the local registrar of the registration district in which the death occurs."

It will be observed that the amendment of said section by the Legislature of 1933, was as follows:

"By inserting between the words "occurs" and the word "and" in line ten the following words: "Provided, no such removal permit shall be required when a dead body is removed for the purpose of preparing such body for burial, but no such body shall be interred, deposited in a vault, or tomb, cremated or otherwise disposed of until a permit so to do has been properly issued by the local registrar of the district in which the death occurs."

It is the opinion of this department that by the terms of said amendment, Funeral Directors may remove dead bodies from or into any registration district without permit, for the purpose of preparing such body for burial only; that such a body so removed must not be interred, placed in a vault or tomb, cremated or otherwise disposed of until a permit so to do shall have been properly issued by the registrar of registration district in which the death occurred.

II.

Municipal regulations must not directly or indirectly contravene to general law nor can such regulations be repugnant to the policy of the state as declared in general legislation.

Section 7 Article IX of the Constitution provides as follows:

"The General Assembly shall provide, by general laws, for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the power of each class shall be defined by general laws, so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. The General Assembly shall also make provisions, by general law, whereby any city, town or village, existing by virtue of any special or local law, may elect to become subject to, and be governed by, the general laws relating to such corporations."

No city ordinance may be declared valid, that cannot find support in the charter provisions.

In *St. Louis v King*, 226 Mo. l.c. 350, Judge Gantt, in ruling this principal of law said:

"We think this ordinance cannot find support in the charter provision in regard to the regulation of doctors nor in the general welfare clause of the charter of St. Louis.

Applying the well known doctrine in this state, we are constrained to the opinion that this ordinance must fail, because the power to enact it is not conferred in the charter and is not necessarily incident to any power that is expressly granted in the charter, and that the ordinance itself is not in harmony with the statutory law of this state on the subject, but has endeavored to enlarge the powers of the city further than necessary to carry into effect the specific grants of power."

In *Kansas City v Mallett* 59 Mo. App. 1. c. 163, Gill Judge said:

"It is not necessary to invoke the terms of the constitution to announce that the by laws of a municipal corporation in order to be of any validity, must be consistent with its charter and the general statutes of the commonwealth creating it. This is a well understood principal of common law. Such ordinances or by laws must not be repugnant to the legislative policy of the State, as manifested by its general enactments."

In *St. Louis v De Lassus*, 206 Mo. 1. c. 583, Judge Gantt in that case proceeded to measure the ordinance under review by the State Statute on the same subject in order to determine whether or not there were inconsistencies or conflicts.

Therefore in view of the constitutional and statutory limitations, and the authorities of our courts, this department rules that the doctrine that "the creature is not greater than the creator", applies in this matter that is a city ordinance, in conflict with a state statute, or one which exceeds its charter authority is void and of no legal effect.

Respectfully submitted,

W. W. Barnes

Assistant Attorney General

APPROVAL:

Roy McKittrick
Attorney General