

MUNICIPALITIES: City's police power and building regulations apply to county property within the city.

January 15, 1936



Hon. Elliott M. Dampf,  
Prosecuting Attorney,  
Cole County,  
Jefferson City, Missouri.

Dear Sir:

This will acknowledge receipt of your inquiry which is as follows:

"Will you kindly give me your opinion as to the law in the following state of facts?

"Does the city have the power to enforce it's building ordinances against a county for the erection of a county building by funds derived from the bond issue."

Under Section 6092, R. S. Mo. 1929, Jefferson City, Missouri, appears to be a city of the third class.

Sections 6803 to 6817 confer upon cities of the third class various police powers, Section 6803 being as follows:

"The mayor and council of each city governed by this article shall have the care, management and control of the city and its finances, and shall have power to enact and ordain any and all ordinances not repugnant to the Constitution and laws of this state, and such as they shall deem expedient for the good government of the city, the preservation of peace and good order, the benefit of trade and commerce, and the health of the inhabitants thereof,

and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect, and to alter, modify or repeal the same."

Section 6804, in part, provides:

"The city council may also regulate and control the construction of buildings, the construction and cleaning of fireplaces, chimneys, stoves and stovepipes, ovens, boilers, kettles, forges or any apparatus used in any building, manufactory or business which may be dangerous in causing or promoting fires, and may provide for the inspection of the same. The council may also provide, by ordinance, limits within which no building shall be constructed except of brick or stone or other incombustible materials, with fireproof roofs, and impose a penalty for the violation of such ordinance, and may cause buildings commenced, put up or removed into such limit, in violation of such ordinance, to be removed or abated."

With reference to the rights of counties, Section 12010 provides for the appointment of commissioners to select county seats.

Section 12014 provides that such commissioners shall make suitable selection.

Section 12031 has to do with the power of the county court over such commissioners.

Section 12043 provides that "there shall be erected and maintained in each county, at the established seat of justice thereof, a good and sufficient courthouse and jail."

Section 12045 provides that under certain conditions, cities, acting in conjunction with the counties, may build courthouses for the joint use of both.

Section 12056 provides that "whenever the county court of any county shall think it expedient to erect any of the buildings aforesaid, \* \* \* they shall make an order for the building thereof \* \* \*."

Section 12058 empowers the county court to purchase for the county real estate for a site for a courthouse, etc.

Section 12059 provides for the method of payment for the real estate so acquired.

Section 12060 states that the county court shall designate the place whereon to erect any county building.

Section 12061 provides that if there is no suitable ground for that purpose belonging to said county within the limits of the original town known as the established seat of justice, the superintendent shall select a proper piece of ground anywhere within the corporate limits of the town known as the county seat, and may purchase, etc., and make report to the circuit court.

Section 12065 provides the method of letting the contract for county buildings.

In 43 C. J., page 248, Sec. 247, under "Municipal Corporations", the law is declared as follows:

"It is held that the county is amenable to the reasonable police regulations imposed by the corporation in the interest of the general welfare."

In the case of Cook County v. Chicago, 311 Ill. 234, 246, 142 N. E. 512, 31 A. L. R. 442, the court in discussing the question of the powers of cities to exercise regulations over county property, said:

"The powers granted to the counties under the general law do not include the police power. That power is granted to cities and villages under the act concerning their incorporation and by that statute it extends to all buildings within its limits. The county is not required to build a court house within the limits of any city but may build it elsewhere if directed to do so by the people, or may maintain or condemn land of its own volition without a vote of the people. \* \* \* When the county builds a court house within the limits of a city it may be held that in so doing it acts voluntarily. No good reason, therefore, is perceived why it should not be made amenable to the reasonable police regulations imposed

by the city in the interest of the general welfare. It is urged that the county is an arm of the State to which there has been committed the control of the county buildings, and that it is not, therefore, subject to the police power of the city. While the county is an agency of the State it is likewise a creature of the State vested with only the powers conferred upon it by the State. It is not correct, therefore, to say that the county is a part of the State in the exercise of police power."

In the case of Boone County v. Cantley, 51 S. W. (2d) 56, l. c. 58, in speaking of the right of sovereignty, the court said:

"By statute (section 3152, R.S. 1929), and at common law, the State is entitled to priority of payment out of the assets of an insolvent debtor. \* \* \* But the statute is without application where the debt is owing by the insolvent debtor to a county or township. \* \* \* And, according to the great weight of authority, the common-law prerogative right of the state is not available to its political subdivisions."

The reasoning in the Illinois case, supra, appears to be logical. While the statutes above cited refer to county courts conferring upon counties certain powers, it does not appear that the police power has been by the Legislature conferred upon counties with respect to county property. On the other hand, the general police power is conferred upon the city, and if the county authorities build within the city, they do so subject to the right of the city to exercise reasonable police regulations over their property.

#### CONCLUSION

It is our opinion that the City of Jefferson has the right to enforce its reasonable building ordinances against the county with respect to the building of county buildings within the corporate limits of such city.

Yours very truly,

DRAKE WATSON,  
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,  
(Acting) Attorney General