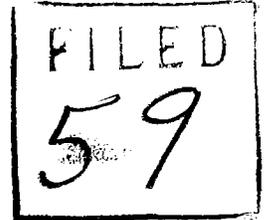


CONSTITUTIONAL LAW: IN RE: Under Section 31, Article VI, Constitution of 1945, the City of St. Louis is recognized as a county. Under C.S.H.B. #476 the City of St. Louis would be a county of the first class and laws applicable to such counties would apply to the City of St. Louis.

October 9, 1946

F I L E D

59



Honorable David A. McMullan
Carter, Bull, Garstang & McNulty
418 Olive Street
St. Louis 2, Missouri

Dear Sir:

This will acknowledge your letter requesting an opinion which reads as follows:

"I represent Walter H. Toberman, Clerk of the Circuit Court of the City of St. Louis and kindly request an opinion from your office on the following matter.

"There was passed by the present Legislature House Bill No. 886 which provided in all counties of Class 1, the attorney filing a suit in the Circuit Court shall deposit with the Clerk of the Court \$1.00 to be used as a law library fee.

"There is a difference of opinion as to whether or not this bill, which was approved April 5, 1946, applies to the City of St. Louis. As Mr. Toberman is a state officer I believe it appropriate to request an opinion from your office as to whether or not this law applies to the City of St. Louis.

"In my opinion this law becomes effective October 7, 1946, and I would, therefore, appreciate your prompt attention to this matter."

House Bill No. 886, which was approved April 5, 1946, in part provides:

"Section 2. In all counties of Class 1, the attorney or attorneys for any party filing suit in the circuit court of such county shall at the time of filing said suit,

deposit with the clerk of said court the sum of one dollar (\$1.00) in addition to all deposits now or hereafter required by law or court rule, and no summons shall be issued until said deposit has been made; provided, that this act shall not apply to actions sent to said county on change of venue or an appeal from inferior courts, or to suits, civil or criminal, filed by the county or state or any city.

"Section 3. On the first day of each month said circuit clerk shall pay the entire fund created by said deposits during the preceding month to the judge or judges of the circuit court of the county in which such deposits were made, or to such person as the judge or judges of the circuit court of said county may designate as treasurer of said fund, and said fund shall be applied and expended under the direction and order of the judge or judges of the circuit court of any such county for the maintenance and upkeep of the law library maintained by the Bar Association in any such county, or such other law library in any such county as may be designated by the judge or judges of the circuit court of any such county; provided, that the judge or judges of the circuit of any such county, and the officers of all courts of record of any such county, shall be entitled at all reasonable times to use the library to the support of which said funds are applied."

In view of the fact that this bill pertains exclusively to counties of the first class the question propounded is whether or not it applies to the City of St. Louis. In deciding the question we must consider the applicable constitutional provisions. Section 8, Article 6 of the Consitution of 1945 provides:

"Classification of Counties--Uniform Laws.-- Provision shall be made by general laws for the organization and classification of counties except as provided in this Constitution. The number of classes shall not

exceed four, and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all counties in the class to which such county belongs." (Emphasis ours.)

Pursuant to the mandate of the above section, C.S.H.B. #476 was enacted by the 63rd General Assembly. This bill was passed with an emergency clause and was approved by the Governor on December 5, 1945. C.S.H.B. #476, in part, provides:

"Section 1. All counties of this state are hereby classified, for the purpose of establishing organization and powers in accordance with the provisions of Section 8, Article VI, Constitution of Missouri, into four classes as follows:

"Class 1. All counties now having or which may hereafter have an assessed valuation of three hundred million dollars (\$300,000,000.00) and over shall be in the first class.

* * * * *

"Section 2. For the purposes of this act, 'assessed valuation' shall mean the valuation of all real and personal property as determined and finally established by the state agency charged with the duty of equalizing assessments.

"Section 3. For the purpose of determining the initial class of the various counties, the assessed valuations of the respective counties as set forth on pages 333 to 400 of the 'Journal of the Board of Equalization of the State of Missouri for the Year Ending December 31, 1944' shall be used; * * *"

In order for House Bill #886, supra, to apply to the City of St. Louis, that political subdivision would have to fall within the category of counties of first class as determined by C.S.H.B.

#476. Section 31 of Article VI of the Constitution of 1945 provides:

"Recognition of City of St. Louis as now existing--The City of St. Louis, as now existing, is recognized both as a city and as a county unless otherwise changed in accordance with the provisions of this Constitution. As a city it shall continue for city purposes with its present charter, subject to changes and amendments provided by the Constitution or by law, and with the powers, organization, rights and privileges permitted by this Constitution or by law."
(Emphasis ours.)

This section was not in the 1875 Constitution and is entirely new, and so far has never been judicially construed. The language in the above section is plain in stating that the City of St. Louis is now recognized both as a city and as a county, it does not appear nor is it indicated that it is recognized as a special type or class of county although as a city and for city purposes, it shall continue to function under its present charter.

The Constitution in Section 30, Article VI permits the re-organization and consolidation of the county governments of the city of St. Louis and St. Louis County and the manner in which it could be accomplished. However, until such reorganization and consolidation is accomplished they shall remain separate entities. The words "county governments" as used in this section is further recognition of the City of St. Louis as a county.

Other authority for recognizing the city of St. Louis as a county exists in Section 655, R.S.Mo 1939, in the 19th subdivision, which reads:

"* * * nineteenth, whenever the word 'county' is used in any law, general in its character to the whole state, the same shall be construed to include the City of St. Louis, unless such construction be inconsistent with the evident intent of such law, or of some law specially applicable to such city;
* * *"

In the case of State ex inf. McKittrick v. Dwyer. 124 S.W.(2d) 1173, 343 Mo. 973, there was an action in quo warranto to determine the question of respondent's title to the office of treasurer of the city of St. Louis. The principle issue was whether or not Sections 12130, R.S.Mo. 1929 and 12130c, Laws of Missouri, 1939, were applicable to the city of St. Louis. Section 12130, supra, provided for the election of a county treasurer in the several

counties in the state and Section 12130c, supra, provided for the election of a county treasurer in counties having a population of forty thousand (40,000) inhabitants or more (except in counties having seventy-five thousand (75,000) and not more than ninety thousand (90,000) inhabitants) and in all counties of less than forty thousand inhabitants under township organization. In ruling on the applicability of these statutes to the city of St. Louis, the court said at S. W. 1. c. 1174:

"On the adoption of the 'scheme' for the separation of the city and the county, the city became both a political subdivision of the State and a city in its corporate capacity. * * *"

Again, at S. W. 1. c. 1176, the following was said:

"The word 'county', as used in Secs. 12130 and 12130c, includes the City of St. Louis, and the mayor was without authority to appoint respondent to the office of treasurer of the City of St. Louis, and he should be ousted from said office. * * *"

In the case of State ex rel. Harvey v. Sheehan, 190 S. W. 864, 269 Mo. 421, the Supreme Court in considering the applicability of a statute to the city of St. Louis, said at S. W. 1. c. 865:

"We have no doubt that under the nineteenth subdivision of section 8057, R. S. 1909, section 3508, R. S. 1909, and section 23, art. 9, of the Constitution, the term 'counties,' found in connection with the provision of the act under review and which prescribes liability for the fee mentioned, should be construed as including the city of St. Louis. * * *"

Also in the case of Fischbach Brewing Co. v. City of St. Louis et al, 87 S. W.(2d) 648, the court said, quoting from Lovins v. St. Louis, 84 S. W.(2d) 127:

"* * *The sole and only section found in the amendment which confers upon St. Louis any rights, powers, or functions as a quasi county or political subdivision of the state is section 23 (R. S. 1929, p. 131), of which the relevant part reads: "The city, as enlarged, shall be entitled to the same

representation in the General Assembly, collect the state revenue and perform all other functions in relation to the State, in the same manner, as if it were a county as in this Constitution defined." Under the maxim ejusdem generis "all other functions" must be interpreted as comprising functions of the same general nature as those specified in connection with that phrase, and the intended functioning means normal action in relation to the matter specified and others of the same nature. A county, as a governmental unit composed of the people resident within its prescribed territory, can only function concerning affairs committed to it as a governmental unit. It has nothing to do with the purely corporate or nongovernmental affairs of the city as such and no functions concerning them to perform. The city of St. Louis, in so far as its county functions extend, is coequal in that respect with all other counties in the state but not different therefrom. Constitutionally, while St. Louis in its entirety is of a dual nature, it is in no sense either a super-city proper or a super-county.* * *" (Underscoring ours.)

To further sustain the recognition of St. Louis city as a county, we refer to the Journal of the Constitutional Convention regarding the meaning of Section 31, Article VI, supra, where, on the 139th day, May 11, 1944 at page 2205, it was said:

"MR. PHILLIPS(of ST. LOUIS CITY) MR. PRESIDENT, this amendment--the purpose of this amendment is to recognize the distinction between the city of St. Louis as a city and the city of St. Louis as a county, * * *"

Again, on page 2206, Mr. Phillips said:

"MR. PHILLIPS: Now I for one know the previous history of the attempt to get St. Louis County and St. Louis City as counties to consolidate. * * * I do think that the way ought to be left for St. Louis to stay just where it is as a county and to expand as a city into any other county just like any other city of the state."

Section 8, Article VI, supra, provides that the number of classes of counties shall not exceed four and that their classification shall be made by general law. Since the City of St.

Louis does not appear to be recognized as a special class of county in Section 31, Article VI supra, it is therefore, our notion that it would have to fall within one of the four classes fixed by the Legislature. To hold otherwise and say that the City of St. Louis is a special class of county, or possibly a county of the 5th class, would be in conflict with the Constitution. To hold that the City of St. Louis as a county would fall within one of the four classes would eliminate the possibility of conflict between the section of the Constitution providing for the classification of counties and the section recognizing the City of St. Louis as a county. Such an interpretation would tend to better harmonize those two sections.

The Legislature has provided in C.S.H.B. #476 that all counties having an assessed valuation of 300,000,000.00 dollars and over shall be in the first class and for the purpose of determining the classes of the various counties the assessed valuation of the respective counties as set forth on pages 333 to 400 of the Journal of the Board of Equalization of the State of Missouri for the Year Ending December 31, 1944, shall be used. On page 400 of the Journal the assessed valuation of the City of St. Louis is given to be 1,211,440,991.00 dollars. Therefore, the City of St. Louis being recognized as a county meets the qualifications to put it within the category of counties of the first class.

CONCLUSION

In view of the foregoing, it is the opinion of this department that the City of St. Louis is recognized as a county, and as such would be classified as a county of the first class as provided in C.S.H.B. #476. House Bill #886, pertaining to counties of the first class, would apply to the City of St. Louis.

Respectfully submitted,

RICHARD F. THOMPSON
Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General

RFT:mw