

CHARTER COUNTIES, CITIES,))
TOWNS AND VILLAGES:)

The term "incorporated cities," found in Section 18(c), Article VI, Constitution of Missouri, includes all incorporated cities, towns and villages.



April 21, 1953

Honorable C. W. Detjen
Assistant County Counselor
St. Louis County
Clayton, Missouri

We have given careful consideration to your request for an opinion, which request is as follows:

"Hon. John J. McAtee, County Counselor, has requested that I write to you for an opinion on the following subject.

"St. Louis County has adopted a Special Charter under the provisions of Article VI, Section 18 of the 1945 State Constitution. Section 18(c) of this Article of the Constitution provides:

"The charter may provide for the vesting and exercise of legislative power pertaining to public health, police and traffic, building construction, and planning and zoning, in the part of the county outside incorporated cities; and it may provide, or authorize its governing body to provide, the terms upon which the county shall perform any of the services and functions of any municipality, or political subdivision in the county, except school districts, when accepted by vote of a majority of the qualified electors voting thereon in the municipality or subdivision, which acceptance may be revoked by the vote.'

"In St. Louis County there are nearly one hundred incorporated municipalities, most of which are 'cities', but a few

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of them are classed as 'towns' or 'villages' under our Statutes. Incorporated towns and villages are permitted to enact police and traffic ordinances and zoning ordinances. St. Louis County, under its Charter, has also legislated on the subjects of traffic and zoning.

"The question is now raised as to whether the words 'incorporated cities' as used in Article VI, Section 18 of the Constitution, includes towns and villages, in which event the County's ordinances would not apply in the latter municipalities; or, on the other hand, whether 'incorporated cities' are to be construed to mean cities in a more restricted sense, in which event the County's traffic and zoning ordinances would control so far as towns and villages are concerned."

Section 18(c), of Article VI, of the Constitution of Missouri has never been construed by the Appellate Courts of the State. We must, therefore, rely upon the well-known rules of statutory construction and undertake to determine the intent of the convention at the time this section was written into the Constitution of 1945.

Evidently the purpose herein is to give counties adopting the charter form of government "legislative power pertaining to public health, police and traffic, building construction, and planning and zoning," in the rural areas of the county where such authority does not exist. All cities, towns and villages are vested with such power, and the convention certainly did not intend to duplicate this authority or open the way for conflicts in local administration.

The term "incorporated cities" is a very broad term and it may be construed to include incorporated towns and villages, or it may apply to municipal corporations of all classes. The Supreme Court of the State of Washington

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defined this term in the case of *Town of Elma vs. Carney*,
4 Wash. 418. In the course of that opinion, on page 419,
the Court said:

"* * * The appellant is a municipal corporation of the fourth class called a 'town' (Gen. Stat., Sec. 505), and the respondent maintains that the term 'incorporated city,' used to designate a class of appellants who are not required to file appeal bonds, under Code Proc., Sec. 1407, does not include a 'town.' But we are strongly convinced that there was no such intention on the part of the legislature. The state and every one of its municipal servants are, by the terms of this section, relieved of giving bonds, as they ought to be, unless this invidious exception has been made. This is the evident policy adopted with deliberation, as was the act of March 27, 1890, which treated of municipal corporations alone, and brought the bodies of this class in the state into a harmonious system for the first time. The sections of that act, from 142 on, chartered municipal corporations of the fourth class to be entitled 'towns.' We think we shall do no violence to construction in this case if we interpret 'incorporated city' to mean municipal corporation, and hold that no bond is required. * * *."

CONCLUSION

It is the opinion of this office that the term "incorporated cities," as contained in Section 18(c) of Article VI of the Constitution of Missouri, includes towns and villages and applies to all incorporated cities, towns and villages, as defined by the laws of the State of Missouri.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. B. A. Taylor.

Yours very truly,

JOHN M. DALTON
Attorney General

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