

LIQUOR CONTROL:

St. Louis County is not a "municipal corporation" within meaning of

SPECIAL CHARTER COUNTIES:

Liquor Control Law.



December 29, 1953

Honorable John J. McAtee
St. Louis County Counselor
Courthouse
Clayton, Missouri

Dear Sir:

This is in reply to your letters of recent date requesting the opinion of this department on the question of whether or not St. Louis County, Missouri, is now a "municipal corporation" within the purview and meaning of Chapter 311, RSMo 1949, so that the County Council has the right to authorize and regulate the sale of liquor by the drink in said County.

It is our understanding that St. Louis County is operating under a Charter adopted under the provisions of Article VI, Section 18, et seq, of the 1945 Constitution of Missouri, and has a population of more than five hundred inhabitants outside the limits of the incorporated cities in said County. Paragraph 1 of Section 311.090, RSMo 1949, reads as follows:

"Any person who possesses the qualifications required by this chapter, and who meets the requirements of and complies with the provisions of this chapter, and the ordinances, rules and regulations of the incorporated city in which such licensee proposes to operate his business, may apply for and the supervisor of liquor control may issue a license to sell intoxicating liquor, as in this chapter defined, by the drink at retail for consumption on the premises described in the application; provided, that no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not

Honorable John J. McAtee:

in excess of five per cent by weight, by the drink at retail for consumption on the premises where sold, in any incorporated city having a population of less than twenty thousand inhabitants, until the sale of such intoxicating liquor, by the drink at retail for consumption on the premises where sold, shall have been authorized by a vote of the majority of the qualified voters of said city. Such authority to be determined by an election to be held in said cities having a population of less than twenty thousand inhabitants, under the provisions and methods set out in this chapter. The population of said cities to be determined by the last census of the United States completed before the holding of said election; provided further, that for the purpose of this law, the term 'city' shall be construed to mean any municipal corporation having a population of five hundred inhabitants or more; provided further, that no license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five per cent by weight, by the drink at retail for consumption on the premises where sold, outside the limits of such incorporated cities."

The particular question involved here is, of course, whether St. Louis County comes within the meaning of "any municipal corporation" set forth in Section 311.090, supra, and is, therefore, a "city" as used in said section. A county is defined in 14 Am. Jur. "Counties", Section 3, pages 185 and 186, as a subdivision of the state, organized for judicial and political purposes. It is a political organization of certain territory within the state, particularly defined by geographical limits. It is not invested with any of the attributes of sovereignty. A county is a constituent part of the state government, and a wholly subordinate political division or instrumentality, created and existing with a view to the policy of the state at large and serving as an agency of the state for certain specified purposes.

A definition of municipal corporations, as applied to the present question, is found in 37 Am. Jur. "Municipal

Honorable John J. McAtee:

Corporations", Section 6, pages 623 and 624:

"All municipal corporations are public bodies created for civil or political purposes; but all civil, political, public corporations are not, in the proper use of language, municipal corporations. A municipal corporation must be distinguished, on the one hand, from other governmental bodies which although municipal are not corporations, and, on the other hand, from corporations which although public are not municipal. While the term 'municipal corporation' is sometimes used, in its broader meaning, to include such public bodies as the state and each of the governmental subdivisions of the state,--such as counties, parishes, townships, hundreds, etc.,--it ordinarily applies only to cities, villages, and towns which are organized as full-fledged public corporations. The distinction between one of our modern American cities, which is clearly a municipal corporation in the strictest sense, and a section of a state over which a particular public officer holds sway, which is in no sense a municipal corporation, is obvious; but between these two poles there are many forms of territorial subdivisions which it is not always so easy to classify. It is only when the community is granted the privilege of self-government from the state, and is created as a separate entity with power to act as such, and to hold property as its own, to levy taxes and expend them, and to select its own officers, and is not merely a geographical name, a territorial subdivision of the state, and the sphere of the authority of a particular public officer, that it is entitled to be called a 'municipal corporation.' The power of local government is said to be the distinctive purpose and the distinguishing feature of

Honorable John J. McAtee:

municipal corporations proper. Counties, townships, towns (as existing in certain New England states), and other political subdivisions of the state are not strictly corporations but are public quasi corporations, sometimes defined as involuntary, political, or civil subdivisions of the state, created by general laws to aid in the administration of government."

A discussion of counties as corporations is found in 14 Am. Jur. "Counties", Section 4, pages 186 and 187 as follows:

"If a county is a corporation, it is necessarily a municipal or public corporation rather than a private corporation, but according to the weight of modern authority, neither counties nor boards of county commissioners are corporations in the strict sense of the term. This modern view is contrary to earlier decisions which placed counties in the category of ordinary municipal corporations. There is a logical basis for drawing a distinction between counties and ordinary municipal corporations. Counties are created by the state in the exercise of its own sovereign power, without the particular solicitation, consent, or concurrence of the people who inhabit them. They owe their creation to statutes which confer upon them all the powers they possess, prescribe their duties, and impose the liabilities to which they are subject. With scarcely an exception, all the powers and functions of the county organization have a direct and exclusive reference to the general policy of the state and are, in fact, only a branch of the general administration of that policy. Municipal corporations, on the other hand, are more amply endowed with corporate life and functions. They exist under general or special charters conferred at the direct solicitation or by the free consent of the people who compose them and are created chiefly for the interest, advantage, and convenience of their inhabitants. Notwithstanding the foregoing

Honorable John J. McAtee:

distinctions, it must be recognized that counties have certain attributes which are found in corporate bodies. * * *."

It is stated in 20 C.J.S., Counties, Section 3b, page 758, that there are a number of decisions which hold that a county is a municipal corporation equally with cities and towns, but while it is in a sense a municipal corporation, and may sometimes be properly classed as such, together with other public, political, and quasi corporations, to distinguish them from private or business corporations, and is so classed or construed under some constitutional and statutory provisions, yet county and municipal corporations proper, differ largely in their purposes, attributes and mode of creation, and are to be distinguished.

Along this line the case of State vs. Little River Drainage District, 236 S.W. 848, decided by the Supreme Court of Missouri in 1921, holds among other things, that the Constitution of Missouri declares a county to be a municipal corporation. This was a case concerning the definition of drainage districts. The reasoning there was that since Section 6, Article X of the 1875 Constitution of Missouri exempted from taxation the property of "the State, counties and other municipal corporations, and cemeteries, * * *" that the Constitution considered counties as being municipal corporations by the use of the language "and other municipal corporations".

We do not challenge the reasoning in the Little River Drainage District case, supra, but on the contrary, feel that it is helpful in determining the issues in the present question under the circumstances as they now exist. We feel that the declaration that a county is a municipal corporation based on a construction of the language of the Constitution, should be reconsidered in the light of the 1945 Constitution of Missouri. The foregoing language of the 1875 Constitution was omitted from the 1945 Constitution and Section 6, Article X exempting property from taxation now reads in part "the state, counties and other political subdivisions, and non-profit cemeteries, * * *". Thus, the constitutional provisions are not the same as they were when the Little River Drainage District case, supra, was decided, and we feel that under the reasoning

Honorable John J. McAtee:

of that case, the only proper construction which can be placed on said section of the Constitution, as it now reads, is that counties of the State of Missouri are now classed only as political subdivisions, and that it was not intended that counties should be considered as municipal corporations.

Further, Section 16, Article VI of the 1945 Constitution is helpful in this regard, in that said section in referring to "Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, * * *" thereby showing a clear intent that a municipality and a political subdivision are considered as two separate and distinct entities.

We believe it logically follows that since a county is declared to be a political subdivision by the 1945 Constitution that it is not a municipal corporation.

We do not believe that the language of Section 311.090, supra, lends itself to a construction that a county is a municipal corporation. The rule that a too literal construction of a section of a statute, which would prevent the enforcement of the whole act according to its intent, should be avoided. *Leibson vs. Henry*, 356 Mo. 951, 204 S.W. (2d) 310. The liquor control law must be read as a whole, and we feel that a serious conflict would result if the county, as well as the city governments within the county, were all allowed to come within the provisions of Section 311.090, supra, in authorizing and regulating the sale of liquor by the drink. In other words, if the county were allowed, by construction of the applicable statutes and constitutional provisions, to be considered a municipal corporation within the purview of Section 311.090, supra, then the power and authority derived from said section would be general throughout the entire county, and would not be limited only to that portion of the county outside the limits of incorporated cities. It would be on an equal footing with that of the incorporated cities and there would be a duplication of authority.

In construing statutes the proper course is to start out and follow the true intent of the Legislature and to adopt that sense which harmonizes best with the context

Honorable John J. McAtee:

and promotes in the fullest manner the apparent policy and object of the Legislature. State vs. Ball, 171 S.W. (2d) 787. The power to authorize and regulate the sale of liquor by the drink has always been placed with the various qualified cities of the state, and this has been without regard to county boundaries. A construction which would run counter to the plain and consistent legislative intent should be avoided. State vs. Kiburz, 357 Mo. 309, 208 S.W. (2d) 285. Had the Legislature so determined, it would have no doubt expressly empowered certain counties to exercise the authorization of Section 311.090, supra, with regard to the sale of liquor by the drink. On the contrary, the provisions of the 1945 Constitution, with regard to special charter counties, gave such counties the power to legislate in certain fields, to-wit, public health, police and traffic, building and construction, and planning and zoning. By failing to specifically authorize such counties to legislate in the field of intoxicating liquor such counties are in effect denied that right, this on the theory that the expression of one thing is the exclusion of another.

CONCLUSION

Therefore, it is the opinion of this department that St. Louis County, Missouri, operating under a Charter adopted under the provisions of Article VI, Section 18, et seq, of the 1945 Constitution of Missouri, is not a "municipal corporation" within the meaning of Chapter 311, RSMo 1949, and is not authorized to come within the purview of the provisions of said Chapter 311, RSMo 1949.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. David Donnelly.

Yours very truly,

JOHN M. DALTON
Attorney General