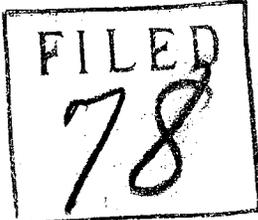


BARBERSHOPS:)
CLOSING WEEKDAY:)

The St. Joseph common council has no power to enact an ordinance prohibiting the opening of barbershops on a weekday (i.e., a day other than Sunday).



February 27, 1954

Hon. Wm. Orr Sawyers
Senator, 34th District
Donnell Court
St. Joseph, Missouri

Dear Sir:

We render herewith our opinion based upon your request of February 15, 1954, which request reads in part as follows:

"The St. Joseph Local Union of the barbers in this vicinity A.F. of L., would like a law regulating barber shops whereby barber shops would be prohibited from opening for business on Mondays or some other week day. Of course there is already a law which prohibits them from opening for business on Sunday. * * *

"The St. Joseph barbers feel that they are entitled to such a law, which in a sense would legalize a five-day week in the operation of barber shops. * * *

"My question is this: Would it be legally possible under the Missouri Constitution and Statutes for the common council of the City of St. Joseph to pass an ordinance prohibiting barber shops from remaining open on Mondays or any week day? I have searched diligently and have not found such authority, but I can be mistaken, and I need your opinion in the matter. * * *"

We conclude that it is not within the power of the common council of the City of St. Joseph to enact an ordinance prohibiting barber shops from remaining open on Monday or another week day. Our reasoning follows:

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It is a well-known principle of law that a municipality has and can exercise only such powers as are conferred by express or implied provisions of law, their charters being a grant and not a limitation of power, subject to strictest construction with doubtful powers resolved against the city. *The City of Springfield v. Clouse*, 206 S.W. (2d) 539, 356 Mo. 1239. St. Joseph is a city of the first class.

Let us look then at the statutes concerning a city of the first class for a grant of authority for such an ordinance as that proposed.

Section 71.750, RSMo 1949, cited in your letter, reads thus:

"The Legislative bodies for all incorporated cities * * * are hereby empowered to pass * * * ordinances to regulate the hours of closing of barbershops. * * *"

This provision, we believe, does not give the necessary authority. It contemplates that the barbershop will open on the business day, and gives authority only to prescribe the hour of closing.

If the municipality has such power, it must be found in Subsection XVII of Section 73.110, RSMo 1949, granting the mayor and common council the power "to license, tax and regulate * * * barber shops * * *"; or in Subsection LVI thereof, which reads, in part, as follows:

"The mayor and common council of cities of the first class are hereby empowered and authorized to pass all needful ordinances for preserving order, securing property and persons from violence, danger or destruction, protecting public and private property, and for promoting the general interest and insuring the good government of such city; * * *."

We take the "general interest" used in the last above quoted to be synonymous with the "general welfare", and to confer upon the city the usual police power to enact ordinances to promote the health, morals, and general well-being of the community.

We believe, however, that the police power of the city will not permit it to enact the proposed ordinance.

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In pursuance of such power, it has been held that it is within the city's police power to prohibit the sale of bakery products by bakers and bakershop keepers after 9:00 A.M. on Sunday. The theory was not that Sunday was a special day which the city council could require to be kept holy, but that one day of rest and quiet during the week was conducive to the health and welfare of the community. *Komen v. City of St. Louis*, 289 SW 838, 316 Mo. 9. Indeed, such ordinances and statutes have generally been held valid, and on the same theory. See Anno. 20 A.L.R., 1114, Constitutionality of statute regulating barbers.

The argument can be made that the legislative authority may find that two days of rest would be more conducive to the public health, and that this would justify such an ordinance. But we think that does not follow.

Since time immemorial, it has been considered that man's health and well-being required that he spend one day in seven in rest and relaxation. In all Christendom the first day of the week is observed as that day -- by both Christians and non-Christians -- except by those who observe instead the seventh day. There is, therefore, sound reasons for according the first day of the week special legislative treatment.

But it is not widely held that two days respite from labor is required for man's health. We think that the relationship between man's health (which is a valid concern of the police power) and the proposed ordinance is too remote to authorize the enactment. In *State ex rel. Newman v. Laramie*, 40 Wyo. 74, 275 P. 106, the Court struck down a municipal ordinance regulating opening and closing hours of barbershops, saying:

" * * * And while the courts repeatedly have said they should not decide as to the expediency of a measure, it has come to be settled by the high court whose decisions establish the rules limiting the exercise of police power that a court should and does determine whether, in its judgment, the law has a real or substantial relation to objects and purposes recognized as legitimate . . . The claim that the restriction in the law bears a reasonable relation to a public interest must not rest on mere conjecture, but must be supported by something of substance . . . Unless the closing regulation in question in the

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case at bar bears a real and substantial relation to the purpose of protecting the public from the spread of disease, it stands on the same footing as any similar restriction on the right of a citizen to engage in a harmless and useful occupation."

We think that reasoning is applicable here.

We could go further. If the council could decree that barbershops be closed on a given day other than Sunday, why not two days? Or three? We think it was not the legislative intention to invest it with that power.

CONCLUSION

It is the opinion of this office that the St. Joseph common council has no power to enact an ordinance prohibiting the opening of barberhsops on a weekday (i.e., a day other than Sunday).

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Don Kennedy.

Yours very truly

JOHN M. DALTON
ATTORNEY GENERAL

JMD:A