

ANNEXATION:
TOWNS AND VILLAGES:
UNINCORPORATED LAND:

The provisions of Section 71.015, RSMo Cumulative Supplement 1953, have no application to the procedure for the extension of boundaries by the annexation of unincorporated areas by any village in the state.



September 8, 1955

Honorable Herbert C. Funke
County Counselor
St. Louis County
Clayton, Missouri

Dear Sir:

For the sake of brevity we will merely set out the questions presented in your request and not the circumstances that gave rise to such. Such question as stated in your letter reads as follows:

"* * * The question I would like your opinion on is: 'Is it required as a pre-requisite for the extension of the boundaries of any village, that it shall first go to the circuit court for a declaratory judgment under the provisions of Section 71.015, RSMo 1953 Supplement, before petitioning the county court or county council for an extension of its boundaries?'"

Section 71.015, RSMo Cumulative Supplement 1953, reads as follows:

"Whenever the governing body of any city has adopted a resolution to annex any unincorporated area of land, such city shall, before proceeding as otherwise authorized by law or charter for annexation of unincorporated areas, file an action in the circuit court of the county in which such unincorporated area is situated, under the provisions of Chapter 527 RSMo, praying for a declaratory judgment authorizing such annexation. The petition in such action shall state facts showing:

Honorable Herbert C. Funke

"1. The area to be annexed;

"2. That such annexation is reasonable and necessary to the proper development of said city; and

"3. The ability of said city to furnish normal municipal services of said city to said unincorporated area within a reasonable time after said annexation is to become effective. Such action shall be a class action against the inhabitants of such unincorporated area under the provisions of Section 507.070, RSMo." (Emphasis ours.)

Section 80.030, RSMo 1949, has to do with the annexation of unincorporated areas and the extension of boundaries of villages in the state. Said section reads as follows:

"Whenever any town or village shall have been so incorporated, or shall have been incorporated by any special act or charter, and any tract or tracts of land, any part of which has been improved or any land adjoining the same that has been or shall be subdivided into town lots or streets, and a plat thereof filed with the recorder of deeds as an addition to such town or village, or any such tract or tracts of land or any such addition, or any part thereof, is not included within the metes and bounds of such incorporated town or village, the town council or board of trustees, when it desires to have such addition or additions included within such corporate limits, shall file a petition with the county court asking that the same, and such other lands as may be necessary to make the boundary of such town or village and addition even and regular, be added to and included within the corporate limits of such town or village; which said petition shall particularly describe such premises and be accompanied by a plat thereof; the county court shall then hear the evidence offered by the parties interested, and may, if it deem it just and proper, order that the whole or such part of said premises as it may think right, be added to and included

Honorable Herbert C. Funke

within the incorporated limits of said town, and shall spread such order, particularly describing the premises added to the corporation, upon the records of the court; and when such addition is so added, it shall be a part of the original incorporation, and entitled to all the privileges thereof; provided, however, that no tract of ten acres or more of any unplatted or unsubdivided land used for farming, gardening, horticultural or dairying purposes shall be included in a town by such extension of boundaries without consent of the owner of such tract."

The problem thus presented is whether a village before annexing unincorporated areas through its county court as outlined above in Section 80.030 must follow the procedure of Section 71.015. In order to answer this question first it is necessary to ascertain whether the Legislature intended Section 71.015 to cover villages as well as cities in the state and it will be noted that in Section 71.015 there is no reference at all to villages, but only to cities. The question then is whether the term "city" as used in Section 71.015 includes the term "village" as found in Section 80.030. In the case of State ex rel. Scott v. Lichte, 226 Mo. 273, 126 S.W. 466, the Missouri Supreme Court in construing the term "city and town" and the term "town or village" came to the conclusion that as it is used in the Constitution of 1875 the Legislature construed the term "cities and towns" to mean cities and the term "town or village" to mean village. The court also stated that the term "city" is used to designate the larger class towns and the name "village" is used for small urban communities. The court goes on to state that the term "city" is to be differentiated from the term "village" and the word "city" applied to large communities, the word "village" to small communities. Applying this reasoning to Section 71.015, this office believes it was the intention of the Legislature that the procedure outlined in Section 71.015 is to be applied to cities of the four classes, since the term "city" is used in said section, and that the Legislature did not intend said section to be applicable to the procedure of villages in annexing unincorporated areas of land since the term "village" is not used in said section and the term "city" which is used in said section does not include in its meaning the term "village."

This belief is also fortified by the fact that in applying the procedure outlined in Section 71.015, to the procedure

Honorable Herbert C. Funke

already applicable to villages under Section 80.030 in annexing unincorporated areas, there is a duplicity of court action inasmuch as under Section 71.015 there must be a petition filed in the circuit court for the annexation of the unincorporated area and under Section 80.030 there must be a petition filed by the village trustees or town council in the county court for the annexation of unincorporated areas. Thus, we would have a duplicity and conflict of court action on the same subject by two different courts. This office does not believe it reasonable to infer that the Legislature so intended Section 71.015 to be applied, but it is more reasonable to say that the Legislature intended Section 71.015 to be applicable to cities of the four classes when such procedure as outlined in Section 71.015 supplements and does not conflict with the procedure already provided for in the annexation of unincorporated areas by cities of all four classes since the procedure by the cities for the annexation of unincorporated areas is by the city council or by the city council and voters of the city and it did not, prior to Section 71.015, involve court action. Thus, this office believes that the Legislature did not intend Section 71.015 to be applicable to villages in the annexation of unincorporated areas and that a village need not follow the procedure provided for in Section 71.015 before it annexes an unincorporated area.

CONCLUSION

It is the opinion of this office that the provisions of Section 71.015, RSMo Cumulative Supplement 1953, have no application to the procedure for the extension of boundaries by the annexation of unincorporated areas by any village in the state.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Volkmer.

Very truly yours,

John M. Dalton
Attorney General

HLV:vlw