

CITIES: TOWNS: VILLAGES:
PETITION FOR INCORPORATION:
SIGNATURE:
WITHDRAWAL OF SIGNATURES:

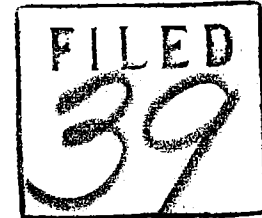
(1) Under Section 80.020, RSMo 1949, a taxable inhabitant who may petition for the incorporation of a town is one who has attained his majority and owns property located within the boundary of the proposed

town which is subject to taxation. (2) The county court must be satisfied that a village or town actually exists and that the lands included therein have a reasonable relation to such village for a petition for incorporation to be reasonable. (3) Those who have signed a petition for incorporation may withdraw their signatures at any time before hearing is held by the county court to determine if the petition bears the signature of a sufficient number of qualified inhabitants.

*Age should now be 18 (or emancipated)
because of Sec 431.055 - voting rights.*

February 27, 1956

Honorable William J. Hensley
Prosecuting Attorney
Johnson County
Warrensburg, Missouri



Dear Mr. Hensley:

This is in response to your recent request for an official opinion of this office concerning the following matters:

"As indicated to you last week by telephone, the County Court of Johnson County, Missouri, has been petitioned under Chapter 80.020 Missouri Revised Statutes 1949, for the incorporation of a town or village immediately south of and adjacent to the south city limits of Warrensburg, Missouri. Said town or village to be known as South Warrensburg, Missouri. The petition appears to comply with the statute in that all matters prescribed by statute are alleged and the petition alleges that there are 150 taxable inhabitants in said area and of that 105 or 106 signatures are attached to the petition.

"Immediately prior to the filing of the petition two individuals struck their names from the petition. After the filing of the petition some twenty-one signers on the petition desired to remove their names therefrom. As yet the County Court of Johnson County, Missouri, has not permitted any individuals to remove their names from the petition after the filing of said petition and since the filing date of the petition the hearing thereon has been continued twice and was continued from last Monday until December 5, 1955.

Honorable William J. Hensley

"The County Court has requested this office to obtain from you your opinion as to the interpretation of statute 80.020 Missouri Revised Statutes 1949, with particular emphasis upon the following questions:

"1. What is the definition of taxable inhabitants?

"2. What is the proper interpretation of the phrase in the statute as follows: 'That the prayer of such petition is reasonable.'?"

"3. Would it be proper after the filing date of this petition with the County Court to permit for valid reasons the withdrawal of any of the names from the original petition? * *"

We will attempt to answer your questions in the order asked. Your first question is as to the definition of "taxable inhabitants" as used in Section 80.020, RSMo 1949. No Missouri case has been found setting out an explicable definition of the phrase "taxable inhabitant." However, at an earlier date the statute which is now Section 80.020, contained an apparent conflict in that it first required the petition for incorporation to be signed by two-thirds of the "inhabitants" of the proposed town, and then required the court to find if such petition bore the signatures of two-thirds of the "taxable inhabitants." In reconciling this apparent conflict the courts determined that it would be unreasonable to require the signature of two-thirds of the "inhabitants" because any normal community would contain over fifty per cent women and children who were not "sui juris." It was therefore concluded that "taxable inhabitants" was the controlling requirement in the statute and by inference from these cases it appears that children were to be excluded, and at that time likewise women. However, since the emancipation of women it is submitted that no distinction on account of sex should be made at the present time in determining who is, or is not, a "taxable inhabitant." In reaching this conclusion the court in the case of State ex rel. Lee v. Jenkins, 25 Mo. App. 484 said at l.c. 488:

"* * * Such an interpretation would, in nine cases out of ten, render the law impossible of execution. It is not unreasonable to suppose that in many, if not a majority, of Missouri towns and villages, at least one-half the population consists of women and children.

Honorable William J. Hensley

It would, therefore, be impossible for two thirds of the whole number to sign a petition, without including many who are not sui juris. The absurdity of the interpretation appears also in other considerations. * * *

In the later case of State ex rel. Coyne v. Buerman, 186 Mo. App. 691, the court again pointed out, l.c. 698:

"It can hardly be intended that children, miners, are to be counted, although they are inhabitants."

From these cases it would appear that the courts have used a definition of "taxable inhabitant" as one who is "sui juris" and who owns taxable property within the limits of the proposed town. Thus, at the present time children would be excluded, but men and women who have obtained their majority, and own such taxable property within the limits of such proposed town would be "taxable inhabitants." This definition is in accord with cases in other states as is found in In re Annexation of Chester Tp. 174 Pa. 177, 34 A. 457; Elkin v. Deshler, 25 N.J.L. (1 Dutch.) 177; Howe v. Town of Ware, 330 Mass. 487, 115 N.E. (2d) 455; In re Annexation of Allison Tp., 4 Lycoming 84, found in 41 Words and Phrases, Permanent Edition, under the heading "Taxable Inhabitant."

Your second question asks the proper interpretation of the phrase contained in Section 80.020 "that the prayer of such petition is reasonable." It should be noted that the courts require that a town or village actually exist before the county court may decree its incorporation. The incorporation of primarily rural, agricultural lands is not authorized by the statutes, and the inclusion of a great amount of such lands in the incorporation of a small urban area has likewise been disapproved. See the discussion of these matters in State ex inf. Rosenberg v. Town of Bellflower, 129 Mo. App. 138, 108 S.W. 117; White v. Small, 131 Mo. App. 470, 109 S.W. 1079 and State ex rel. Patterson v. McReynolds, 61 Mo. 203. In considering the matter of whether or not the petition is reasonable and what is required to satisfy the court of such reasonableness see State ex inf. McKittrick ex rel. Oehler, v. Church (Mo. App.) 158 S.W. (2d) 215, l.c. 220, where the court said:

Honorable William J. Hensley

"The decisions do hold that when the County Court, in its order of incorporation, includes territory not urban in character and with no natural connection or unity of interest with that part subject to incorporation, the whole order is void and may be attacked in a quo warranto proceeding. State ex rel. White v. Small, 131 Mo. App. 470, 109 S.W. 1079; State ex inf. Rosenberger v. Bellflower, 129 Mo. App. 138, 108 S.W. 117. Therefore, if no part of the community was urban in character, that is, if it was not a village within the meaning of the statute, the County Court had no jurisdiction and an information in quo warranto would lie to test the validity of the order."

And the court also concluded at l.c. 221:

"* * * There is no provision for any particular kind of hearing, nor is there any requirement that witnesses be sworn and their testimony taken. All that is required is that the court be 'satisfied' that the required number of qualified persons have signed the petition and that the same is reasonable."

This question is further discussed in State ex inf. Wallach, ex rel. H. B. Deal & Co. Inc. v. Stanwood (Mo. App.) 208 S.W. 2d 291, l.c. 295, where the court said:

"* * * A village is any small group or assemblage of houses in the country which are used for dwelling or business or both, even though they are not situated on regularly laid-out streets. It was so held in the Oehler case above cited, which further held that this court could not control the discretion vested by statute in the county courts absent a grave abuse of such discretion. It must be ruled that the village did exist."

Thus it would appear that where a village does in fact exist and the land contained within the proposed boundaries of the proposed town is of a character primarily useful for village or urban

Honorable William J. Hensley

purposes rather than being primarily or exclusively used or useful for agricultural purposes, and where the court is reasonably satisfied that such is the case, the court may properly, in the exercise of its discretion, order the incorporation upon proper petition. It should be emphasized that the matters discussed above in nowise limit the considerations that may determine the conclusion of the court, for many other things would, under a given set of circumstances, enter into and weigh heavy upon the exercise of the court's discretion.

The third question which you ask is whether or not one who signs a petition for incorporation of a town under Section 80.020 may be permitted to withdraw his signature after such petition has been filed with the county court. It is believed that this question is answered by a previous opinion of this office dated October 14, 1938 to Mr. E. Jay Rice, Presiding Judge of the Texas County Court, copy of which is enclosed herewith, which holds that such signatures may be withdrawn up to but not after the time when the county court makes its determination as to the sufficiency of the number of qualified signers of the petition.

CONCLUSION

It is, therefore, on the basis of the foregoing, the conclusion of this office that:

(1) Under Section 80.020, a taxable inhabitant is a person twenty-one years of age or over, who owns taxable property within the limits of the proposed town.

(2) That a petition is reasonable when it proposes the incorporation of a town which actually exists as a community of inhabitants, and which does not include large amounts of land not used or useable for urban purposes.

(3) That it is proper to allow one signing a petition for incorporation to withdraw his signature therefrom up to the time the county court holds its hearing on the question of the sufficiency of such signatures, but that such withdrawal cannot take place thereafter.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Fred L. Howard.

Yours very truly,

Enclosure - E. Jay Rice
10-14-38

John M. Dalton
Attorney General