

COUNTIES: CLASSIFICATION OF  
COUNTIES: MUNICIPALITIES:  
CITIES: POLICE: POLICE  
RETIREMENT SYSTEMS: FIREMEN:  
FIREMEN'S RETIREMENT SYSTEMS:  
FIRE DEPARTMENTS:

The City of St. Louis is not a city in a county of the first class within the provisions of Section 86.400 RSMo Cumulative Supplement, 1955.



April 2, 1956

Honorable Eugene P. Walsh  
Member of the House of Representatives  
705 Olive Street  
St. Louis 1, Missouri

Dear Mr. Walsh:

You recently requested an official opinion of this office concerning the following question:

"Would you please forward to me at your earliest convenience, an opinion of your office on the following question:

"'Would the following words in Section 86.400 of the Revised Statutes of Missouri, 1949, as amended, apply to the City of St. Louis if it had no established fire department retirement system, or, if the present fire department retirement system were to be repealed by statute, 'any municipality in any county of the first class', or must this clause be read together with the population limitation clause that follows and which reads, "and any other municipality in this state which now contains more than 100,000 inhabitants or less than 3,000 inhabitants, etc.".

"In other words, must the 'municipality in any county of the first class' have not more than 100,000 inhabitants to take advantage of the provisions of this section, or does this section extend its provisions to two separate types of municipalities, "(1) Any

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municipality in any county of the first class" and also to, "(2) Any other municipality in the state which now contains or may hereafter contain not more than 100,000 or less than 3,000 inhabitants".'

"I ask the foregoing on the premises that St. Louis is both a municipality and a county of the first class, as held in some of your prior opinions, and also with the realization that if the clause in question does apply to St. Louis it could only take advantage of same, if it first repealed the statutes relating to its existing retirement system."

Section 86.400 RSMo 1955 Cumulative Supplement, to which you refer, reads in the pertinent part as follows:

"Any municipality in any county of the first class, and any other municipality in this state which now contains or may hereafter contain not more than one hundred thousand inhabitants nor less than three thousand inhabitants . . ."

By this language this statute creates two classifications of municipalities to which it may apply: (1) A municipality in a county of the first class; (2) A municipality of over three thousand and less than 100,000 inhabitants. It is clear that St. Louis cannot come within the second classification since it has more than 100,000 inhabitants. As to whether or not St. Louis may come within the classification of "any municipality of any county of the first class" presents a much more difficult question. By Article VI, Section 31 of the Missouri Constitution of 1945, the City of St. Louis is specifically recognized as a city and as a county. Further, by Article X, Section 11 (d) the City of St. Louis is authorized to levy taxes for county purposes in addition to the taxes it may levy for city purposes. The Supreme Court of Missouri, in the case of *Walters v. City of St. Louis*, 259 SW2d 377, 364 Mo. 56, likewise recognized that under the Constitution the City of St. Louis was both a county and a city, and in the case of *State ex rel. Hart v. City of St. Louis*, 356 Mo. 820, 204 SW2d 234, the court emphasized that the City of St. Louis had separate powers, those of a county as well as those of a city, and that it was, in fact, both a city and a county. This

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office has previously held in an opinion dated October 9, 1946, to the Honorable David A. McMullan, 418 Olive Street, St. Louis 2, Missouri, that under the classifications of counties authorized and required by Article VI, Section 8 of the Constitution the City of St. Louis would in its capacity as a county constitute a county of the first class. Copy of such opinion is enclosed herewith for your information.

On the other hand the Legislature has in several instances, when enacting statutes pertaining to the City of St. Louis, used the classification of a constitutional charter city not within any county. As an example of this see the provisions for the assessment and collection of taxes found in Sections 137.485, et seq., RSMo 1949, and Sections 138.140, et seq., RSMo 1949. Thus it appears that while the City of St. Louis has the powers of a county and when exercising such powers constitutes a first class county, the Legislature has, when making a classification for the purpose of legislation affecting the City of St. Louis, used the description of such class as "constitutional charter cities not situated within any county."

Further, it must be remembered that Section 86.400 RSMo Cumulative Supplement 1955, cannot be considered in a vacuum but must be construed with regard to the system of which it is a part. Chapter 86, RSMo 1949, as amended, provides for police and firemen's relief and pension systems under nine different classifications. One of which is that found in Section 86.400. Police retirement systems and firemen's retirement systems are provided by numerous sections of said chapter which apply only to cities of over 500,000 inhabitants, and thus, it would appear that it was the intent of the Legislature for such statutes affecting cities of over 500,000 inhabitants to apply to the City of St. Louis, and that it was not the intention of the Legislature that the classifications of "any municipality in any county of the first class" should include the City of St. Louis. This especially since the Legislature has often described the City of St. Louis as a constitutional charter city not within any county.

#### CONCLUSION

It is, therefore, on the basis of the foregoing, the conclusion of this office that the City of St. Louis does not come within the classification of "any municipality in any county of the first class" found in Section 86.400 RSMo Cumulative Supplement 1955, and that

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even if the statutes providing for police and firemen's retirement systems specially applicable to the City of St. Louis were repealed, that the city would not be authorized to take action under said Section 86.400.

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

Yours very truly,

John M. Dalton  
Attorney General

FLH:vlw;sm  
Enclosure