

EXTENSION OF BOUNDARIES OF  
SPECIAL CHARTER CITY WITH  
POPULATION OF LESS THAN 20,000:

A special charter city of less than 20,000 inhabitants should extend its boundaries under the provisions of Section 81.080, RSMo, Cum. Supp. 1957, and of Section 71.015, RSMo, Cum. Supp. 1957, when unincorporated areas are to be annexed.



June 27, 1958

Honorable G. A. Witts  
Senator, 14th District  
Route 13, Box 154  
Kirkwood, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"I request your opinion and interpretation of the existing statutes authorizing a municipality to extend its boundaries which in the interest of clarity and brevity is stated in the following manner:

'Is a city or town (described in the statute Section 81.010 as a special charter city) which was incorporated by act of the legislature prior to the Constitution of 1875 required to conform to and comply with Section 71.015 V.M.S.A. (adopted in 1953) in extending its boundaries, or is such city, town or municipality required to comply with Section 80.030 V.M.S.A. in extending its boundaries.'

"Reference is made to State vs Lichte 226 Mo. 273 in which the term 'city or town' is construed to mean 'city'."

Subsequent to writing the above opinion request, you have orally informed us that the city regarding which you wish to have this opinion has a population of approximately 3,000.

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You have informed us that this city is a special charter city within the purview of Chapter 81, RSMo 1949, and more particularly described by Section 81.010 of that chapter, which reads:

"All cities and towns of this state operating under charters granted directly and specially by the general assembly prior to the adoption of the constitution of 1875 are hereby defined and declared to be cities and towns under special charter, and all laws now existing or which may hereafter be enacted relating or making reference to cities or towns under special charter or special charter cities or towns shall be deemed to and shall apply and be valid in relation only to cities and towns of this state defined and declared in this section to be cities and towns under special charter."

Section 81.080, RSMo, Cum. Supp. 1957, provides, in part, as follows:

"1. Any city or town of less than twenty thousand inhabitants and having a special charter, after the taking effect of such charter, may at any time extend its limits by ordinance, specifying with accuracy the new lines to which it is proposed to extend such limits. All courts of this state shall take judicial notice of the limits of such city when thus extended."

It would appear to us that the aforesaid portion of the new Section 81.080 should be followed by a special charter city with a population of less than 20,000 in extending its boundaries.

We believe also that Section 71.015, RSMo, Cum. Supp. 1957, is also applicable to a special charter city with a population of less than 20,000 when it is proposed that unincorporated areas be annexed. Said Section 71.015 reads:

"Whenever the governing body of any city has adopted a resolution to annex any unincorporated area of land, such city

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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:

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."

In the case of City of St. Joseph vs. Hankinson, 312 S.W. 2d, page 4, the Missouri Supreme Court discussed the applicability of this section. In that case the City of St. Joseph had sought to extend its city limits under the provisions of Section 71.015, supra. Opponents of the extension raised the argument that this section was unconstitutional. The Missouri Supreme Court held that it was constitutional and that it was applicable in the case of the City of St. Joseph. At 1.c. 7 of its opinion the court stated:

"It is conceded that St. Joseph is a city of the first class under general law (see Chapter 73, RSMo 1949, V.A.M.S., and State ex rel. Moseley v. Lee, 319 Mo. 976, 5 S.W. 2d 83). It is not a constitutional charter city. Thus, the case of McConnell v. City of Kansas City, Mo., 282 S.W. 2d 518, holding §71.015 unconstitutional as to Kansas City, is inapplicable."

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The case which is referred to above, *McConnell vs. City of Kansas City*, 282 S.W. 2d 518, at l.c. 522, states with reference to Section 71.015:

"It must be apparent, then, that the Sawyer Act, which postpones the submission to the electors of an annexation proposal until a declaratory judgment action shall have been filed (and, incidentally, the time for filing such action is not specified) and finally determined, conflicts with the procedure provided by Art. VI, §20, of the Constitution and, therefore, that the Act is invalid as to charter cities to which Section 20 is applicable."

From the above we conclude that Section 71.015 is applicable to a first class city under the general law and that it is applicable to a special charter city, which is the subject of your inquiry. The City of Kansas City is a constitutional charter city, and for that reason is exempt from the application of Section 71.015, *supra*.

You also inquire regarding the applicability of Section 80.030, RSMo 1949. It appears evident that this section applies to the extension of the boundaries of towns and villages which is not in the classification which we are considering.

#### CONCLUSION

It is the opinion of this department that a special charter city of less than 20,000 inhabitants should extend its boundaries under the provisions of Section 81.080, RSMo Cum. Supp. 1957, and of Section 71.015, RSMo Cum. Supp. 1957 when unincorporated areas are to be annexed.

The foregoing opinion, which I hereby approve, was prepared by an Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON  
Attorney General

HPW/gm/mjb