

ST. LOUIS COUNTY: St. Louis County may, by amendment
CHARTER COUNTIES: of its charter, abolish the elec-
COUNTY CHARTERS: tive offices of assessor and col-
ASSESSORS: lector and establish a department
COLLECTORS: of revenue under an elected director
COUNTY CLERKS: of revenue, which department shall
perform all of the duties heretofore
imposed upon the assessor and col-
lector and the duties of the county
clerk in connection with taxation.

June 15, 1960



Mr. William E. Gallagher
St. Louis County Counselor
Courthouse
Clayton 5, Missouri

Dear Sir:

You have recently requested an opinion from this office wherein you asked the following questions concerning the proposed amendment to the St. Louis County Charter to create a department of revenue:

- "(1) Whether the Electorate of a chartered county may provide, by Charter amendment, for the extinguishment of the elective offices of Assessor and Collector and for the establishment of a new Department of Revenue, headed by an elected Director, which Department would possess and exercise all powers and duties of the said elective offices of Assessor and Collector?
- "(2) Whether the Electorate of a chartered county may provide, by Charter amendment, for the transfer of all statutory tax duties from the County Clerk to a new Department of Revenue created by the same Charter amendment?
- "(3) Whether the Electorate of a chartered county may provide, by Charter amendment, for the performance by a Department of Revenue of all of those duties provided by State statute to be performed by the offices of the Assessor and the Collector, and those statutory

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duties of the County Clerk which relate to the collection of State taxes, and for which duties the County is paid by the State by means of monetary reimbursement and fees provided for by State statute?

"(4) Whether the Electorate of a chartered county may provide, by Charter amendment, for the creation of appointive offices of Assessor and Collector, which offices would perform, under the supervision and control of an elected Director of a Department of Revenue, those duties enjoined and placed by State statute on and in the elective offices of Assessor and Collector?"

St. Louis County has heretofore adopted a special charter under the provisions of Sections 18(a) to 18(1) of Article VI of the Missouri Constitution of 1945.

Section 18(b) of said Article VI provides as follows:

"Provisions required in county charters.- The charter shall provide for its amendment, for the form of the county government, the number, kinds, manner of selection, terms of office and salaries of the county officers, and for the exercise of all powers and duties of counties and county officers prescribed by the Constitution and laws of the state."

Section 18(e) of Article VI provides as follows:

"Laws affecting charter counties - limitations. - Laws shall be enacted providing for free and open elections in such counties, and laws may be enacted providing the number and salaries of the judicial officers therein as provided by this Constitution and by law, but no law shall provide for

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any other office or employee of the county or fix the salary of any of its officers or employees."

Thus, the county, under its charter, is required to provide "for the exercise of all powers and duties of counties and county officers prescribed by the Constitution and the laws of the state." Section 18(b). However, the county, by its charter, may provide for the "number, kind, manner of selection, terms of office and salaries of the county officers." Section 18(b). Section 18(e) of the Constitution authorizes laws providing for free and open elections and the number and salaries of judicial officers only and "no law shall provide for any other office or employee of the county or fix the salary of any of its officers or employees."

Thus, it would appear that the county must provide for the performance of the duties heretofore imposed by law on assessors and collectors and for the duties in connection with taxation so imposed upon the clerk of the county court. However, the county is not bound to provide for the same officers to perform these duties, but may set up its own machinery for the fulfilling of these functions. This was the holding of the Missouri Supreme Court, en banc, in the case of State ex inf. Dalton, ex rel. Shepley v. Gamble, 280 S.W. 2d 656. The court said, l. c. 659:

"St. Louis County, regardless of its charter, remains a legal subdivision of the state. Art. VI, §§ 1 and 18(a). As such, it is charged with the performance of the state functions just as other counties are. Section 18(b), supra, expressly requires that the charter must provide 'for the exercise of all powers and duties of counties and county officers prescribed by the constitution and laws of the state.' "

The court went on to say, l. c. 660:

"It must perform state functions over the entire county and may perform

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functions of a local or municipal nature at least in the unincorporated parts of the county. These are constitutional grants which are not subject to, but take precedence over, the legislative power. St. Louis County alone has the right to determine 'the number, kinds, manner of selection, terms of office and salaries' of its county officers. There can be no doubt that this is a proper constitutional provision, since the people of the state are sovereign, Art. 1, § 1, and they 'have the inherent, sole and exclusive right to regulate the internal government and police thereof * * *,' Art. 1, § 3. The constitution is harmonious in recognizing an exception to the provision for general laws for the organization and classification of counties. Art. VI, § 8."

And the court concluded:

"We hold that the sheriff is a county officer within the meaning of the constitutional provisions for county charters, and particularly §§ 18(b) and 18(e), Art. VI. This clearly appears from the language of the pertinent sections. The result is that provision must be made by the charter county for the performance of the duties enjoined upon sheriffs by our statutes, but the county has the choice as to what officer or agency will be designated to perform the duties. Or the duties may be divided for the purpose of performance as provided by the amendment to the St. Louis County Charter."

It would appear that this reasoning applies with equal force to the offices of assessor and collector and, likewise, to the duties of the county clerk in connection with taxation and, therefore, it would follow that the county

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may abolish the elective offices of assessor and collector and provide a department of revenue to perform the functions of assessing and collecting. Likewise, this authority indicates that the county may take from the county clerk the duties heretofore performed by such official in connection with taxation and provide that such duties are to be performed by said department of revenue.

In the more recent case of *Hellman v. St. Louis County*, 302 S.W. 2d 911, the Supreme Court considered the powers and duties of St. Louis County under its charter and said, 1. c. 916:

"We know of no constitutional or statutory provision that a charter county must exercise the powers and duties enjoined upon it by the constitution in precisely the same manner as prescribed by the general law of the state. The case of *State on Inf. of Dalton ex rel. Shepley v. Gamble, Mo.*, 280 S.W. 2d 656, 660[6,7], states that: '* * * provision must be made by the charter county for the performance of the duties enjoined upon sheriffs by our statutes, but the county has the choice as to what officer or agency will be designated to perform the duties.' Little purpose would be served in authorizing the adoption of charters of local self-government in the more populous counties if such counties could not adopt reasonable means and methods of carrying out their governmental functions in such a manner as to meet the peculiar needs of such counties. It is common knowledge that the problems of the uniform assessment of the taxable property of St. Louis County are manifold and unique.

"[5,6] Article VI, § 18(b) of the Constitution, in authorizing the adoption of home rule charters, directs that the charter 'shall provide * * * for the exercise of all powers and duties of

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counties and county officers prescribed by the constitution and laws of the State.' Such a declaration carries with it an implied grant of such powers as are reasonably necessary to the exercise of the powers granted and are not contrary to the public policy of the state. State ex rel. Spink v. Kemp, Mo., 283 S.W. 2d 502, 514[4-6]."

See, also, the cases of Stemmler v. Einstein, 297 S.W. 2d 467, and Schmoll v. Housing Authority of St. Louis County, 321 S.W. 2d 494.

CONCLUSION

It is, therefore, on the basis of the foregoing, the conclusion of this office that St. Louis County may amend its charter to abolish the elective offices of assessor and collector and establish a department of revenue headed by an elective director of revenue, which department would exercise the powers and duties heretofore imposed upon such elective assessor and collector; likewise, St. Louis County may, by amendment of its charter, transfer from the county clerk the duties heretofore imposed upon that officer in connection with taxation and provide for the exercise of such duties by the department of revenue. St. Louis County may also provide for appointive offices of assessor and collector within its department of revenue.

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

Very truly yours,

John M. Dalton
Attorney General

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