

CITIES, TOWNS, VILLAGES:
SPECIAL CHARTER CITIES:
CONSTITUTIONAL LAW:
GENERAL ASSEMBLY:
LEGISLATURE:
CITY CHARTERS:
AMENDMENT OF CITY CHARTERS:

Legislature may have authority to provide
for amendment of charter of special charter
city by vote.

May 14, 1963



Honorable Patrick J. O'Connor
Missouri House of Representatives
Room 301, Capitol Building
Jefferson City, Missouri

Dear Representative O'Connor:

You have asked the following question:

"May the State Legislature by the proper
enactment vest in the City of Florissant
the power to amend or supplement its present
charter by an affirmative vote of the
electorate voting on such propositions."

The City of Florissant, like a few other cities in this
state, operates under a special charter first authorized by the
Missouri Legislature in 1857.

Your question is whether the legislature can vest in the
City of Florissant, the power to amend its present special charter by
a vote of the people.

Obviously, this could not be done by a special law, since
Article III, Section 40 (22) of the Missouri Constitution prohibits
special laws amending the charter of a city.

The question then is whether a general law applicable to
special charter cities (or special charter cities of a certain range
in population) could authorize the amendment of such special charters
by a vote of the people.

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Article VI, Section 16 of the Constitution provides for the classification by the legislature of cities into four classes and that general laws shall define the powers of such classes. However, in *Rutherford v. Hamilton*, 97 Mo. 543, the Missouri Supreme Court held that such special charters may be amended by general laws enacted by the legislature and such section of the constitution does not specifically refer to laws setting forth powers of special charter cities.

The question is then whether a general law applicable to special charter cities or certain special charter cities in a class which general law authorizes the amendment of such special charters by an election of the voters of such a city would constitute an unconstitutional delegation of legislative powers.

In the case of *Yazoo City v. Lightcap*, 82 Miss. 148, the Supreme Court of Mississippi held valid a statute providing that city charters could be amended by the preparation of an amendment to the charter by the mayor and city council and publication of such amendment in a newspaper of general circulation, after which the amendment was to be submitted to the Governor, who submitted it to the state attorney general and, if the attorney general was of the opinion that the amendment was consistent with the constitution and laws of the United States and Mississippi, the Governor should approve the amendment.

If, after publication, one-tenth of the voters of such city protested against an amendment, the Governor could not approve the amendment until such amendment was approved by a majority of the voters of the municipality.

Such statute was attacked on the ground that it was an unconstitutional delegation of legislative power in violation of a provision of the Mississippi Constitution providing that the legislature should pass general laws under which cities and towns might be chartered and their charters amended.

The Supreme Court of Mississippi held that there was no unconstitutional delegation of legislative power by the legislature in authorizing cities to amend their charters by such a procedure.

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In the case of Reeves v. Anderson, 42 P. 625, the Supreme Court of Washington held valid a statute authorizing freeholders to prepare a new charter for a city when a petition of one-fourth of the freeholders of such city was filed asking for the appointment of the freeholders. The court said, l. c. 626:

"In support of the contention that the act in question is a delegation of a legislative power, we are cited to article 2, section 1, of the constitution, which is: 'Section 1. The legislative powers shall be vested in a senate and house of representatives, which shall be called the legislature of the state of Washington.' Independent of the constitutional provision now under consideration, an examination of the authorities upon the subject leaves little room for doubting the authority of a given class the powers to make laws for their local self-government, subject at all times, however, to the general laws of the state. ***"

Under these two cases and others of the same tenor, there is some authority for holding that the delegation by a law enacted by the legislature of the power to cities to amend their charters is not an unconstitutional delegation of legislative power.

However, there still remains some doubt as to whether the Missouri Supreme Court would permit such a delegation of power.

Article VI, Sections 19 and 20 of the Missouri Constitution provide for charters to be framed and amended by the inhabitants of cities over 10,000. It may well be that such constitutional delegation is the only authority in Missouri for the amendment of charters by a vote of the people of a city.

In the case of State v. Orange, 36 Atl. 706, the Supreme Court of New Jersey held an act unconstitutional which authorized a city council to consolidate offices and fix the duties of such consolidated offices as having violated the provision of the state constitution that the legislative power should reside in the Senate and House of Representatives of the state.

In the case of Elliott v. Detroit, 84 N.W. 820, the Supreme Court of Michigan held that an act which provided for amending a city charter when a resolution of the council and mayor was passed or when 5,000 inhabitants asked for an election and the amendments were adopted by a vote of the people was an unconstitutional delegation of legislative power to the people of the city, which power could be exercised only by the legislature under a constitutional provision that the legislature may confer upon cities such power of a local legislative and administrative power as they deem proper.

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In the case of State ex rel. V. Thompson, 137 N.W. 20, the Supreme Court of Wisconsin held invalid a statute which provided:

"'Every city, in addition to the powers now possessed, is hereby given authority to alter or amend its charter, or to adopt a new charter by convention, in the manner provided in this act, and for that purpose is hereby granted and declared to have all powers in relation to the form of its government, and to the conduct of its municipal affairs not in contravention of or withheld by the Constitution or laws, operative generally throughout the state.'"

Such court held that the act was unconstitutional because it delegated legislative power contrary to the constitution of such state. The court said, l.c. 23:

"In view of the foregoing, very little need be said in testing the act in question by constitutional restrictions. As we have seen, determination of the form of government and everything appertaining to the fundamentals of a city charter are essentially legislative functions. Power in that respect was so universally regarded before the Constitution and thereby the Legislature was disabled from delegating it. Can one read the act under consideration and doubt that, in terms and effect, it involves an attempt at legislative abdication of that power, to a large extent? ***"

The Constitution of Missouri provides in Article III, Section 1, that the legislative power shall be exercised by the Senate and House of Representatives.

CONCLUSION

The question whether by general law the Missouri Legislature can vest special charter cities with the authority to amend their charters by a vote of the people has never been decided in this state. Cases in other jurisdictions have decided this question both ways.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, C. B. Burns, Jr.

Yours very truly,

THOMAS F. EAGLETON
Attorney General