

CITIES: Article VI, Sec. 16, Constitution of Missouri,  
COUNTIES: authorizes enactment of a law permitting one  
MUNICIPALITIES: municipality to contract with another to fur-  
POLITICAL SUBDIVISIONS: nish police services; but does not authorize  
CO-OPERATION BETWEEN enactment of a law permitting a contract for  
POLITICAL SUBDIVISIONS: municipal judicial service.

May 15, 1963

OPINION REQUEST NO. 213

Honorable E. J. Cantrell  
State Representative  
St. Louis County, 6th District  
Capitol Building  
Jefferson City, Missouri



Dear Mr. Cantrell:

You have inquired as to whether or not two cities may contract with one another to furnish police service and/or municipal judges' services.

We have considered this problem, particularly in connection with Article VI, Section 16, Constitution of Missouri, which appears to have application, as well as Article VI, Section 14, applying to counties, insofar as it may shed light on the meaning of Section 16.

Article VI, Section 16, provides as follows:

"Any municipality or political subdivision of this state may contract and cooperate with other municipalities or political subdivisions thereof, or with other states or their municipalities or political subdivisions, or with the United States, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service, in the manner provided by law."

It is apparent that this section of the Constitution authorizes the Legislature to pass laws relating to the co-operation between municipalities or other political subdivisions respecting the "planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service." It would

appear, therefore, that your inquiry relates to this last phrase concerning a common service. The construction of the meaning of the words "common service" does present difficulty. We believe it should be given a rather broad meaning. This is necessary to accomplish the purposes and economies in local government that the writers of the Constitution envisioned. We believe that the courts would be inclined to give it a meaning which would permit municipalities or other political subdivisions to contract with one another to perform almost any administrative service which they each have a duty at one time or another to perform. Therefore, it would seem that services like assessment and collection of taxes, street maintenance and repair, fire prevention and fire fighting, and police service, are the character of services included within the meaning of this language on the theory that each of these services would be common services required to be performed by each municipality and would therefore fall within the meaning of the language "common service" of the Constitution, referred to above.

We have, however, greater difficulty with the problem of a contract between two municipalities whereby one would furnish the service of municipal judges to another. It seems to us that there would be a risk, at least, that this provision might be deemed to be in conflict with Article II, Section 1 of the Constitution, which is the so-called separation of powers provision. Even more fundamental and elementary than the separation of powers provision of the Constitution is a foundation principle of government that executive, legislative and judicial powers which relate to the exercise of sovereignty are generally considered nondelegable duties. It would seem unlikely that the draftsmen of the Constitution intended to authorize one political subdivision to delegate to another the authority to exercise its strictly sovereign functions. For example, one county court could not by contract authorize the county court of another county or city council of a municipality to perform its strictly executive or legislative functions. For this reason, we think it questionable whether the constitutional provision relating to co-operation between political subdivisions would be construed broadly enough to include authority for one city

Honorable E. J. Cantrell

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to delegate by contract to another city the power and authority to judge the violation of the other city's ordinances.

CONCLUSION

Article VI, Section 16, Constitution of Missouri, authorizes the enactment of a law permitting one municipality to contract with another to furnish police services; but does not authorize the enactment of a law permitting a contract for municipal judicial service.

The foregoing opinion, which I approve, was prepared by my Assistant, J. Gordon Siddens.

Yours very truly,

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THOMAS F. EAGLETON  
Attorney General

GJS:ml