

/April 19, 1965



Honorable Paul M. Berra
State Senator, 3rd District
Capitol Building - Room 429
Jefferson City, Missouri

Dear Senator Berra:

You recently requested the views of this office as to Senate Bill No. 71, 73rd General Assembly, which would establish and regulate maximum hours of duty for paid firefighters in fire departments of cities, villages and fire districts having a population of ten thousand inhabitants or more.

The bill in brief provides as follows:

Section 1 of the Bill provides that except for certain enumerated exceptions found in Sections 2 and 3, no employees of any city, town, village or fire district fire departments having in excess of ten thousand population shall work longer than the hours set out in Section 2.

Section 2 establishes and regulates the hours to be worked and when they are to be worked. It further excepts some employees of fire departments that do not actually fight fires and provides that the hours of such employees shall not be in excess of the hours worked by the majority of other city employees.

Section 3 excepts from the provisions of Sections 1 and 2, the chief, volunteers and the members required to remain on duty during emergencies.

Section 4 provides that no employee shall lose wages or benefits due to this act or due to the decrease of hours worked.

You ask if this bill is questionable in any way. We understand from conversations with you that opponents of this bill have questioned the bill's constitutionality on three grounds and you are asking if this bill's constitutionality is indeed questionable on these grounds.

One ground challenges the general legislative power to enact any legislation regarding the hours of service of firemen.

The argument is that a city's fire department is purely a local matter, separate and apart from the interests of the people of the state at large.

There are no Missouri cases on this point, however, courts in other jurisdictions have found that the legislature may not validly enact such legislation regulating hours of firemen. See cases cited at 16 McQuillin, Municipal Corporations, §45.03.

On the other hand, courts have found this within the power of the legislature and this appears to be the general rule. This rule is stated at 62 C.J.S. Municipal Corporations, §600, p. 1235, as follows:

"The state . . . may regulate the hours of service of its firemen. Provisions for the establishment of shifts or a platoon system for firemen have generally been upheld as valid In the absence of constitutional restrictions, the state legislature may enact laws relative to the hours of service of firemen without infringing on a municipality's right of home rule and local self government."

We may only speculate as to which rule the Missouri courts would follow. The state has a public interest in the fighting of fires within the state. Fires do not follow municipal boundary lines. They may begin within the bounds and spread outside or vice versa. It is not purely a local function. Thus, it is our view that the legislature probably has the general power to enact a bill regulating fire departments and hours of employment of firemen under its police power.

Opponents of the bill contend that even if the legislature has the general power to enact such legislation, Senate Bill 71 is limited in its application only to cities other than constitutional charter cities, because of Article VI, §22, Constitution of Missouri, 1945. This Article prohibits the legislature from creating or fixing the powers, duties or compensation of employees of constitutional charter cities. The Article provides as follows:

"No law shall be enacted creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter * * *" (Emphasis added.)

It is possible that the courts of Missouri may determine that Senate Bill 71 fixes or creates the powers, duties or compensation of firemen of constitutional charter cities.

It is difficult to reasonably construe this bill to fix or create powers of firemen. The constitutionality of this bill, if enacted into law, may be challenged and it is possible that the courts may find it to be creating or fixing duties or compensation of firemen.

Section 4 of the bill, which provides that no fireman "shall suffer any reduction in annual pay, sick leave time, vacation pay or time, or any other benefits being received" because of this act or a decrease in hours worked as provided in this act, could possibly be construed by the court as violating Article IV, §22 of the constitution. It is possible that this could be construed by the courts to be fixing the duties or compensation of employees of constitutional charter cities.

The Missouri Supreme Court En Banc in City of Joplin v. Industrial Commission of Missouri, 329 S.W.2d 687, by way of dictum held that if the Prevailing Wage Act (Section 290.210-290.310) were applied to employees of constitutional charter cities it would be unconstitutional as to such cities as fixing compensation prohibited by Article VI, §22. The court said, l.c. 692:

"* * *It is also a familiar rule of construction that when one construction of a statute will make it unconstitutional and another construction will make it constitutional, the latter will be made if it is reasonable. State ex inf. McKittrick v. American Colony Ins. Co., 336 Mo. 406, 80 S.W.2d 876, 883, and cases cited. To construe the Act as applicable to direct employees of public bodies would make it unconstitutional as to all cities adopting their own charters under the provisions of Sec. 19, Art. VI, of the Constitution because Sec. 22 of Art. VI provides: 'No law shall be enacted creating or fixing * * * compensation of any municipal office or employment, for any city framing or adopting its own charter * * *. Furthermore, the legislative history of the Act indicates an intent to limit its application to employees of contractors constructing public works on contracts with public bodies. This seems clear from a consideration of the language originally used in House Bill 294 that was left out of the House Committee Substitute for House Bill 294, which was the

measure enacted by the 1957 General Assembly. We therefore, hold that the Act does not apply to employees of public bodies."

The courts of Missouri may find that the dictum of the Missouri Supreme Court En Banc in such case regarding the validity of the Prevailing Wage Law if applied to employees of constitutional charter cities may apply equally to a legislative attempt to fix minimum salaries or other conditions of employment for firemen of such cities.

Opponents of the bill also challenge the bill as a special law in violation of Article III, §40, which prohibits the legislature from passing local or special laws:

"(21) creating offices, prescribing the powers and duties of officers in, or regulating the affairs of counties, cities, townships, election or school districts; . . .

"(27) regulating labor, trade, mining or manufacturing; . . .

"(30) where a general law can be made applicable, and whether a general law could have been made applicable is a judicial question to be judicially determined without regard to any legislative assertion on that subject."

Senate Bill 71 applies only to persons employed by fire departments of cities, towns, villages and fire districts with over ten thousand population. It excepts the person in charge of the fire department and volunteers from its provisions. It also treats those employees of the fire department who do not actually fight fires differently than the firefighters. Since it has these different classifications, it might be attacked as a special law in violation of Article III, §40.

A law is not a special law merely because it does not apply to everyone in the state. A law may be general if it relates to persons or things as a class rather than relating to particular persons or things. *State v. Ward*, 328 Mo. 658, 40 SW2d 1074; *Walters v. City of St. Louis*, 259 SW2d 377.

The classification must rest upon some reasonable basis and not upon a purely arbitrary division. *Reals v. Courson*, 349 Mo. 1193, 164 SW2d 306.

Therefore, it is our view that if the classifications in the bill are found by the courts to be based upon reason and are not purely arbitrary, the bill if passed would probably not be held by the Courts to be a special law. Probably any challenge of the law would be on the ground of unreasonableness of the classifications.

Honorable Paul M. Berra

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We have attempted to inform you of the major grounds that the constitutionality of this bill would be questioned in the courts if finally passed. The bill may possibly also be challenged on other grounds which we cannot foresee at this time.

We cannot with assurance predict what course the courts would take if the bill is finally enacted. While the act if enacted may be attacked in the courts, a presumption of validity will attach to the enacted statute and the courts will uphold its validity unless it clearly contravenes some constitutional provisions. *State v. Weindorg, Mo.*, 316 SW2d 806. In addition, if the courts should find one section of the law invalid the remainder of the act will not be invalid if it is complete in itself without the invalid portion. *State ex rel. McDonald v. Lollis*, 326 Mo. 644, 33 SW2d 98.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

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