

CITIES:  
FIRST CLASS CITIES:  
INCORPORATION:  
ADOPTION OF CHARTER:  
CONSTITUTIONAL CHARTER CITIES:

An unincorporated area incorporating as a first class city cannot at the same time adopt a charter form of government, but may hold elections to present the question of adoption of a charter only after organizing as a first class city.

May 13, 1969

OPINION NO. 225

Honorable Herman P. Winkelmann  
State Representative - 48th District  
Room 403, State Capitol Building  
Jefferson City, Missouri 65101



Dear Representative Winkelmann:

This is in answer to your request for an official opinion of this office concerning the question whether an area incorporating as a first class city may, at the same time, incorporate with a charter form of government.

A city of the first class contains more than sixty-five thousand inhabitants. Section 72.010, RSMo 1959. Cities of the first class are organized under Chapter 73, RSMo, ". . . in the manner provided by law . . .", Section 73.010, RSMo 1959. A procedure for this incorporation is found in Section 72.080, RSMo 1959, relating to cities of all classes, and provides for presentation of a petition by a majority of an unincorporated city's inhabitants to the county court of the county where the "city" is situated. An alternative procedure is provided in Section 72.085, RSMo Supp. 1967, for unincorporated areas in second class counties and first class counties with a charter form of government.

Any city having more than ten thousand inhabitants may frame and adopt a charter form of government in the manner provided in Section 19 of Article VI, Constitution of Missouri, and Chapter 82, RSMo. Section 19 of Article VI of the Missouri Constitution provides in part as follows:

"Any city having more than 10,000 inhabitants may frame and adopt a charter for its own government, consistent with and subject to the constitution and laws of the state, in the following manner: The

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legislative body of the city may, by ordinance, submit to the voters the question: 'Shall a commission be chosen to frame a charter?' . . . The question shall also be submitted on a petition signed by ten per cent of the qualified electors of the city, filed with the body or official in charge of city elections."

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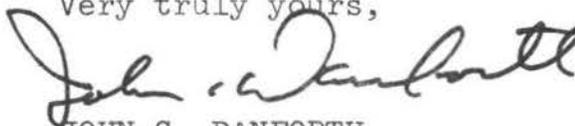
In Opinion No. 34, Hollingsworth, May 21, 1964 (copy enclosed), we held that an unincorporated area may not initially incorporate as a third class city having a City Manager form of government. It is our view that the same is required of areas incorporating initially as a first class city, due to the requirement of the Constitution that the "legislative body of the city" or "ten per cent of the qualified electors of the city" must begin action toward a city charter (emphasis added). A "city" with a "legislative body" and a "body or official in charge of city elections" must already exist before a charter election can be initiated. Therefore, initial incorporation as a city is a prerequisite to holding elections to adopt a charter form of government.

CONCLUSION

It is the opinion of this office that an unincorporated area incorporating as a first class city cannot at the same time adopt a charter form of government, but may hold elections to present the question of adoption of a charter form of government only after first organizing as a first class city.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, William L. Culver.

Very truly yours,



JOHN C. DANFORTH  
Attorney General