

MUNICIPAL CORPORATIONS:
POLICE:

Independence, a Constitutional Charter City is not prevented by state law from empowering the Chief of Police to commission reserve policemen.

June 26, 1969

OPINION NO. 257

Honorable William R. Royster
State Representative
Room #414 - 8th District
State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Royster:

This is in response to your letter of recent date in which you requested an opinion of this office as to whether State law prohibits the City of Independence, Missouri, a Constitutional Charter City, from empowering its Chief of Police to commission reserve officers. These reserve officers would be citizens of Independence, not appointed to the regular police force, who are given the authority to make arrests.

In Missouri the organization and regulation of police is a state function. See: State ex rel. Hawes v. Mason, 153 Mo. 23 (1899); State ex rel Reynolds v. Jost, 265 Mo. 51 (1914). However, historically, local government units have performed this function until the state entered the field. For example, until 1861 St. Louis performed this function for its own police force. Even after the state took over the regulation of the police force of St. Louis it was recognized that the police bear a dual role - as both local and state officers. See Section 84.330 RSMo 1959. Nor is it inconsistent with the state's pre-eminent authority over the police to allow a city to itself control matters regarding its police force so long as that local authority is not taken away by conflicting or pre-empting state legislation. See: State ex rel. Arey v. Sherrill 142 Ohio St. 574, 53 N.E. 2d 501 (1944).

The General Assembly has purported to control police matters by statute in cities with a population between 300,000 and 700,000 and cities with a population of over 700,000 (ch. 84, RSMo) in first, second, third and fourth class cities (ch. 85 RSMo) and, in towns and villages (Sections 80.400 to 80.420 RSMo). It has not purported to do so explicitly with regard to constitutional charter cities as such. However, it might be relevant to note that cities with a population between 300,000 and 700,000 under the authority of Section 84.540 RSMo, may appoint persons not members of the regular force, as reserve policemen with the power to arrest. Under the provisions of Section 85.230 RSMo, cities of the first class may, by ordinance, authorize certain persons other than persons who are conservators of the peace under Sections 85.010 to 85.290 (relating to city police in first class cities) to make arrests. A similar provision exists with regard to second class cities. Section 85.340 RSMo. Moreover, there is no

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general prohibition on the appointment of reserve policemen.

CONCLUSION

It is the opinion of this office that no state law prohibits the City of Independence, a Constitutional Charter City, from empowering the Chief of Police to commission reserve policemen with the power to arrest.

The foregoing opinion, which I hereby approve, was prepared by my Special Assistant, Dennis J. Tuchler.

Yours very truly,

A handwritten signature in black ink, reading "John C. Danforth". The signature is written in a cursive style with a large initial "J" and a long, sweeping underline.

JOHN C. DANFORTH
Attorney General