

September 24, 1969



OPINION LETTER NO. 302
Answer by Letter - Bartlett

Honorable Frank L. Mickelson
Representative
One Hundred, Tenth District
Freeman, Missouri 64746

Dear Representative Mickelson:

This letter is in response to your request for an opinion on the validity of Belton City Ordinance No. 69-394.

Being a fourth class city, Belton has limited powers and can exercise only such powers as are expressly granted by statute to it or those powers necessarily incidental to or implied by the powers expressly granted. City of Richland v. Null, 194 Mo. App. 176, 185 S.W. 250, 251 (1916).

Belton is granted the power to regulate certain businesses by Section 94.270, RSMo 1959.

"The mayor and board of aldermen shall have power and authority to regulate and to license and to levy and collect a license tax on . . . merchants of all kinds . . . automobile agencies, and dealers, . . . dealers in automobile accessories, . . . and all other businesses, trades and avocations whatsoever, . . ."

"Merchants of all kinds", "automobile dealers" and "all other businesses, trades and avocations whatsoever" are broad enough terms to include used car dealers. Having the power to regulate used car dealers, the question becomes whether Ordinance No. 69-394 is a valid exercise of that power.

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Ordinance No. 69-394 should be measured against the following constitutional provisions:

1. The equal protection clause of the Fourteenth Amendment to the United States Constitution;

" . . . No state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

2. Article I, Section 2, Missouri Constitution;

"That all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty, the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design."

3. Article I, Section 10, Missouri Constitution;

"That no person shall be deprived of life, liberty or property without due process of law."

4. The due process clause of the Fourteenth Amendment, United States Constitution;

"No state shall . . . deprive any person of life, liberty or property without due process of law, . . ."

5. Article III, Section 40(30), Missouri Constitution;

"The general assembly shall not pass any local or special law:

* * * *

"(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;"

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In analyzing the validity of the ordinance in question under the due process and equal protection clauses of the federal and state Constitutions, it is important to realize that the power to "regulate" granted to Belton by Section 94.270, RSMo 1959 means to prescribe the manner in which a thing licensed may be conducted. A grant of power to regulate a business carries with it the authority on the part of the city to exercise the police power impliedly vested in it to accomplish the municipal function delegated. Marshall v. Kansas City, 355 S.W.2d 877, 882 (Mo. S.Ct. en banc, 1962).

Is the ordinance in question an arbitrary or unreasonable exercise of the police power vested in the City of Belton? Initially, we must determine whether the ordinance in question has been enacted for the protection, and in furtherance of the peace, comfort, safety, morality and general welfare of the inhabitants of Belton. ABC Liquidators, Inc. v. Kansas City, 322 S.W.2d 876 (Mo. S.Ct. Div. No. 1, 1959). We believe that the Belton Board of Aldermen could have believed that it was necessary to enact the ordinance in question to protect the safety and general welfare of the inhabitants of Belton. For instance, to require adequate lighting may discourage vandalism and theft, adequate ingress and egress may promote traffic safety and restriction of used cars to a particular part of the lot may improve overall appearance.

However, to be a reasonable exercise of the police power, any classification made by the ordinance must rest on a sound basis in fact. ABC Liquidators, Inc. v. Kansas City, supra. Ordinance No. 69-394 purports on its face to regulate only "used vehicle lots in the City of Belton which are not operated in conjunction with new car vehicle sales". Is there a sound basis in fact for excluding from the coverage of Ordinance 69-394 used vehicle lots operated in conjunction with new car sales?¹

Footnote

1. On July 29, 1969, we wrote the City Attorney of Belton, Missouri requesting that he forward to us a copy of all Belton Ordinances pertaining to the sale of new or used automobiles. On August 1, 1969, he transmitted to us a copy of Ordinance 69-394 and Ordinance 69-18. 69-18 proposes to regulate the sale of used vehicles made in conjunction with the sale of new cars in a similar manner as Ordinance No. 69-394 seeks to do for used cars sold not in conjunction with new cars. However, the City Attorney of Belton advised us that Ordinance 69-18 has not been passed. Therefore, the foregoing opinion is based on the assumption that Ordinance No. 69-394 is the only Belton Ordinance regulating the sale of used automobiles.

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This is the same question as arises in analyzing whether the ordinance in question is a special law under Article III, Section 40(30) of the Missouri Constitution. See ABC Liquidators, Inc. v. Kansas City, supra. Therefore, our analysis below of the reasonableness of the classification for determining if the ordinance in question is a special law would also apply to the question of whether it violates the due process and equal protection clauses of the United States and Missouri Constitutions.

Article III, Section 40(30) prohibits the General Assembly from passing a local or special law where a general law could have been made applicable. This provision applies to city ordinances as well as to state statutes. Mathison v. Public Water Supply District No. 2, 401 S.W.2d 424, 432 (Mo. S.Ct. Div. No. 1, 1966); McKay v. Kansas City, 256 S.W.2d 815, 816 (Mo. S.Ct. en banc, 1953).

Two questions must be answered before concluding that Ordinance 69-394 is or is not a special law:

1. Is the ordinance in question a local or special law and,
2. If it is, could a general law have been made applicable?

See Mathison v. Public Water Supply District No. 2, supra.

The party attacking Belton Ordinance No. 69-394 would have the burden of showing that the classification made by the ordinance between used vehicle lots operated in conjunction with new vehicle sales and those operated separately is unreasonable. ABC Liquidators v. Kansas City, supra, at 855.

A special law has been defined as follows:

"It is well established in this state that a law is not a special law if it apply to all alike of a given class, provided the classification thus made is not arbitrary or without reasonable basis."
City of Springfield v. Smith, 322 Mo. 1129, 19 S.W.2d 1, 3 (1929)

* * * * *

". . . But, as pointed out above it is not necessary to the validity of such legisla-

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lation that it shall include every possible activity which might be included in the subject-matter. The demands of the organic law are satisfied if all similarly situated are included and none are omitted whose relationship to the subject-matter cannot by reason be distinguished from that of those included." Id. at 5.

* * * *

"We are not here so much concerned with determining how many activities which threaten to disturb the subject-matter sought to be protected could or might be included in the one piece of legislation, but our problem of instant concern is whether some have been omitted from the ordinance now involved which it would be clearly unreasonable and arbitrary to omit." Id.

"The definition and tests frequently employed to distinguish special or local from general legislation has been stated thus: 'A statute which relates to persons or things as a class, is a general law, while a statute which relates to particular persons or things of a class is special * * *.' * * * "The test of a special law is the appropriateness of its provisions to the objects that it excludes. It is not, therefore, what a law includes, that makes it special, but what it excludes." * * * 'If in fact the act is by its terms or "in its practical operation, it can only apply to particular persons or things of a class, then it will be a special or local law, however carefully its character may be concealed by form of words.'" Reals v. Courson, 349 Mo. 1193, 164 S.W.2d 306, 307-308 [1-5]; Laclede Power & Light Co. v. City of St. Louis, supra, 182 S.W.2d 1.c. 72 [2-4]." Mathison v. Public Water Supply District No. 2, supra, at 432. (Emphasis added)

Does the ordinance in question include all similarly situated?
Has anything been omitted from the coverage of the ordinance whose

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relationship to the subject matter cannot by reason be distinguished from those included? All used vehicle lots which are operated in conjunction with new car sales are expressly excluded from the coverage of this ordinance. Are such lots in any less need of adequate lighting to prevent vandalism and theft? Are such lots in any less need of adequate ingress and egress to prevent traffic hazards? Are such lots in any less need of adequate paving? Are such lots in any less need of adequate signs for identification? Is there something about those lots which make them incapable of being eye sores? Is there any reasonable basis for singling out those selling only used automobiles and those selling used automobiles in conjunction with new automobiles? We cannot answer these questions in the affirmative. If the purpose of this legislation was to further the safety and general welfare of the inhabitants of Belton by attempting to correct certain inherent evils or difficulties associated with the used vehicle business, we can see no reason why the provisions of the ordinance are not just as appropriate to the used car operations of new car dealers. Therefore, we believe that the classification contained in Belton Ordinance No. 69-394 is an unreasonable, arbitrary classification and that this ordinance violates the prohibition in the Missouri Constitution against special legislation.

Could a general law have been made applicable? The answer to this question is apparent because all used vehicle lots could have been included in the coverage of Ordinance 69-394.

Having concluded that the classification contained in Ordinance 69-394 is an unreasonable classification for the purposes of the provision of the Missouri Constitution prohibiting special legislation, we also conclude that the classification is unreasonable for the purposes of the due process and equal protection clauses of the Missouri and United States Constitutions. Therefore, we believe that Ordinance 69-394 is violative of those provisions, also.

Very truly yours,

JOHN C. DANFORTH
Attorney General