

Answer by letter-Gardner

May 13, 1970

OPINION LETTER NO. 261

Honorable Frank L. Mickelson
State Representative
District No. 110
State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Mickelson:

This is in response to your request for information regarding the possibility of amending or in some manner changing the charter of the City of Pleasant Hill.

As pointed out in your letter, the City of Pleasant Hill is one of the few Missouri cities that operates under a special charter. Pleasant Hill was incorporated as a special charter city by legislative act approved March 14, 1859, Laws 1859, page 156 and amended by legislative act approved March 17, 1871. Laws 1871, page 168. The current Missouri Manual shows that the city now has a population of 2,689.

Certain fundamental principles of the law relating to municipal corporations are set forth in *State v. Crismon*, 188 S.W.2d 937 as follows:

" . . . 'The power to create or establish municipal corporations, or to enlarge or diminish their area, to reorganize their governments, or to dissolve or abolish them altogether is a political function which rests solely in the legislative branch of the government, and in the absence of constitutional restrictions, the power is practically unlimited.' 37 Am.Jur., Municipal Corporations, § 7, p. 626. In that connection this court has said: 'It has long been the rule in this state, and generally

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throughout the country, that the power of the legislature in the creation of public corporations * * * is absolute except where limited by the constitution. The legislature may also change, divide, consolidate and abolish them as the public welfare demands.' State ex rel. Consolidated School District No. 8 of Pemiscot County et al., v. Smith, State Auditor, 343 Mo. 288, 121 S.W.2d 160, 162, and cases therein cited."

The Constitution of Missouri places restrictions on the power of the legislature to change the charter of municipal corporations.

Article III, Section 40 of the Constitution provides:

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

* * * * *

"(22) incorporating cities, towns, or villages or changing their charters;"

Moreover, the Constitution of Missouri requires a classification of cities and that their power shall be defined by general law. Article VI, Section 15 of the Constitution provides:

"The general assembly shall provide by general laws, for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the powers of each class shall be defined by general laws so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. The general assembly shall also make provisions, by general law, whereby any city, town or village, existing by virtue of any special or local law, may elect to become subject to, and be governed by, the general laws relating to such corporations."

The General Assembly carried into effect the above provision of the Constitution and enacted Section 72.040, RSMo Supp. 1967, which reads as follows:

"All cities and towns in this state containing five hundred and less than three thousand inhabitants, and all towns existing under any

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special law, and having less than five hundred inhabitants which shall elect to be cities of the fourth class, shall be cities of the fourth class."

It seems evident without extended comment that the foregoing constitutional and statutory provisions not only prohibit an amendment of the legislative charter but also provide a method of transition from a municipality containing less than three thousand inhabitants and "existing under any special law" to a city of the fourth class.

The laws under which the City of Pleasant Hill was incorporated do not require the charter to be ratified every fifty years by a vote of the people. Your question whether the charter has any particular advantages or disadvantages is a question concerning which we are not in a position to advise you. It would be our suggestion that this question be submitted to the city attorney for consideration.

Yours very truly,

JOHN C. DANFORTH
Attorney General