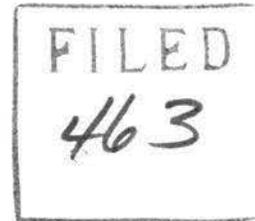


Answer by Letter (Klaffenbach)

OPINION LETTER NO. 463

August 21, 1970

Honorable G. William Weier
Prosecuting Attorney
Jefferson County Court House
P. O. Box 246
Hillsboro, Missouri 63050



Dear Mr. Weier:

This letter is in response to your request for an opinion in which you ask whether Section 72.130, RSMo 1969, is in violation of the provisions of Section 15, Article VI of the Missouri Constitution.

Section 72.130 provides as follows:

"No city, town or village shall be organized within any county of the second, third or fourth class within this state under and by virtue of any law thereof, adjacent to or within two miles of the limits of any city of the first, second, third or fourth class or any constitutional charter city, unless the city, town or village be in a different county from the city, except that a city, town or village may be incorporated within the two mile area if a petition signed by the majority of the inhabitants of the area proposed to be incorporated is presented to the existing city requesting that the boundaries of the existing city be extended to include the area proposed to be incorporated and if action taken thereon by the existing city is unfavorable to the petition or, if no action is taken by the existing city on the petition, then the city, town or village may be incorporated after the expiration of one year from the date of the petition."

Honorable G. William Weier

Section 15 of Article VI of the Constitution states:

"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."

We have examined Section 72.130 and find no clear violation of any constitutional provision.

It is a well-settled principle of constitutional construction that, only when there is a clear conflict between a legislative enactment and the constitution, are the courts warranted in declaring the law to be void. In the Matter of Burris, 66 Mo. 442, 450 (1877), Borden Co. v. Thomason 353 S.W. 2d 735, 756 (Mo. 1962).

Very truly yours,

JOHN C. DANFORTH
Attorney General