

May 11, 1971

Answer by letter-Wood

OPINION LETTER NO. 44



Mr. Joseph Jaeger, Jr.  
Director of Parks  
Missouri State Park Board  
1204 Jefferson Building  
Jefferson City, Missouri 65101

Dear Mr. Jaeger:

You have requested my opinion as to what jurisdiction, if any, does the St. Louis County Planning and Zoning Commission have over the Dr. Edmund A. Babler Memorial State Park.

St. Louis County operates under a constitutional charter:

"Any county having more than 85,000 inhabitants, according to the census of the United States, may frame and adopt and amend a charter for its own government as provided in this article, and upon such adoption shall be a body corporate and politic." (Article VI, Sec. 18(a), Constitution of Missouri, 1945)

"The charter may provide for the vesting and exercise of legislative power pertaining to public health, police and traffic, building construction, and planning and zoning, in the part of the county outside incorporated cities; . . ." (Article VI, Sec. 18(c), Constitution of Missouri, 1945)

We understand that Babler Memorial State Park is situated in an unincorporated area of St. Louis County.

The St. Louis County Charter provides:

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"Pursuant to and in conformity with the constitution of Missouri and without limiting the generality of the powers vested in the council by this charter, the council shall have, by ordinance, the power to:

\* \* \*

"(14) Exercise all powers and duties now or hereafter conferred upon counties, county courts, county governing bodies and county officers by the constitution, by law and by this charter and determine and make provision for any matter of county government not otherwise provided herein;

\* \* \*

"(22) Exercise legislative power pertaining to public health, police and traffic, building construction, and planning and zoning, in the part of the county outside incorporated cities, and on such other subjects as may be authorized by the constitution or by law; . . ." (Article II, Sec. 2.180, Charter of St. Louis County, as amended, 1968)

"The director of planning shall exercise those powers and perform those duties with respect to planning and zoning required of him by ordinance." (Article IV, Sec. 4.250, ibid)

". . . The [planning] commission [within the department of planning] shall advise and make recommendations to the director and the council with respect to planning and zoning and shall perform such other duties as may be required by ordinance. . . ." (Article IV, Sec. 4.260, ibid)

The county council has by ordinance divided the unincorporated area of St. Louis County into various land use classifications and defined conditions and limitations appropriate to each classification (Sec. 1003.030, Revised Ordinances, St. Louis County, 1968). One of these land use classifications is the Park and Scenic District.

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"1. The 'PS' Park and Scenic District of St. Louis County encompasses land which has recreational, scenic and health value owned by public agencies or land in which public agencies have some lesser legal interest. . . ." (Section 1003.103, Revised Ordinances, St. Louis County, 1968)

We assume that all land owned now or in the future by the State of Missouri and controlled by the Missouri State Park Board in unincorporated St. Louis County as a part of Babler Memorial State Park would bear this Park and Scenic District classification.

The Park and Scenic District ordinance, above cited, provides for certain permitted land uses and developments, conditional land uses and developments, structural height and location limitations, parking space requirements, and sign regulations. We understand the core of your question to be whether or not these various limitations and requirements of the Park and Scenic District ordinance govern the State Park Board in its management and development of Babler Memorial State Park.

The Supreme Court has made the following observations on the nature of a county operating under a constitutional charter pursuant to Article VI, Section 18(c), Constitution of Missouri, 1945.

"Moreover, charter counties are endowed with some of the powers and functions of a municipal corporation in the area outside incorporated cities. They are empowered to exercise legislative power pertaining to public health, police and traffic, building construction, and planning and zoning in such areas. Section 18(c) [Article VI, Constitution of Missouri, 1945] . . . . These are police powers ordinarily vested in municipal corporations. . . . A county under the special charter provisions of our constitution is possessed to a limited extent of a dual nature and functions in a dual capacity. It must perform state functions over the entire county and may perform functions of a local or municipal nature at least in the unincorporated parts of the county. These are constitutional grants which are not subject to, but take precedence over, the legislative power. . . ." (State on inf. Dalton v. Gamble, 280 S.W.2d 656, 660 (Mo. banc 1955))

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In a later case, the Supreme Court ruled that a state statute setting forth procedures for re-zoning in first class counties did not apply to the St. Louis County Council and was superseded by the council's ordinance, inconsistent with the statute, passed pursuant to Article VI, Section 18(c) of the Missouri Constitution and the equivalent section of the St. Louis County Charter. In so ruling, the court commented:

". . . It is true that zoning regulations are an exercise of the police power of the state and that the exercise of the police power is a governmental function, nevertheless a portion of the state's police power may be delegated, and it has been delegated to St. Louis County by Section 18(c) of Article VI of the Constitution of Missouri 1945. . . ." (Casper v. Hetlage, 359 S.W.2d 781, 789 (Mo. 1962))

In *St. Louis County v. City of Manchester*, 360 S.W.2d 638 (Mo. banc 1962), the Supreme Court upheld the authority of the county, in the exercise of its zoning power pursuant to the Constitution and Charter, to limit a municipality's right under state statutes to select through condemnation the site for a sewage disposal plant outside the limits of the city and in an unincorporated area of the county.

"Planning and zoning, as well as sewage disposal, is a governmental function referable to the police power. . . . The planning and zoning powers which are vested in charter counties directly by the Constitution are of similar character and in some respects such constitutional powers take precedence over the legislative grants. . . .

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"Ordinarily, the grantee of the power of eminent domain may determine the location of the facility or improvement and the land to be taken for it, but the power of selecting a location may be restricted by statute or an ordinance having the force and effect of a statutory provision. . . .

"Contrary to the city's contention, the grant of municipal powers to charter counties under § 18 of Art. VI is meaningful and vests rights

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which cannot be taken away or impaired by the general assembly, one of which is to exercise legislative power pertaining to planning and zoning in the part of the county outside of incorporated cities. . . ." (St. Louis County v. City of Manchester, 360 S.W.2d 638, 640-641 (Mo. banc 1962))

Accordingly, we believe that the Charter of St. Louis County must be viewed as statutes for the county's government and subject to the usual rules of statutory construction.

"Local zoning ordinances are not applicable to public uses of property for which an agency of the government has the power to acquire lands by the exercise of the power of eminent domain. . . . The state and its agencies are not within the purview of a statute unless an intention to include them is clearly manifest, especially where prerogatives, rights, titles or interest of the state would be divested or diminished. . . . 'Zoning restrictions cannot apply to the state or any of its agencies vested with the right of eminent domain in the use of land for public purposes.'" (State ex rel. Askew v. Kopp, 330 S.W.2d 882, 888-889 (Mo. 1960))

The St. Louis Court of Appeals has ruled that the State of Missouri, in erecting a clinic and administration building at the St. Louis State Hospital within the City of St. Louis, was not required to obtain a building permit from the city and in so doing commented:

"The issues herein distill into the question of whether the State has by legislation or by its contract with plaintiff empowered the City to impose the permit fee on plaintiff. We first inquire whether legislation thus empowered the City. On this, we turn to the well-established principle that an ordinance does not apply to a state with reference to its own property unless the charter expressly gives the city authority to bind the state or the state waives its right to regulate its property. (citations omitted) The state and its agencies are not within the purview of a statute unless an intention to include them is

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clearly manifested, especially where prerogatives, rights, titles, or interests of the state would be divested or diminished or liabilities imposed on it. . . ." (Paulus v. City of St. Louis, 446 S.W.2d 144, 150-151 (St.L.Ct.App. 1969))

The Charter of St. Louis County does not expressly give to the county any zoning authority over state owned land nor do we believe that it clearly manifests an intention to include state owned land within the scope of the county's zoning powers. Although we have some doubts that the charter could constitutionally make such express provisions (" . . . a charter for its own government . . . " (Emphasis added; Article VI, Sec. 18(a), Constitution of Missouri), we need not here decide that question. Therefore, absent any authority contained in the statutes of the state, we do not think that the lands of Babler State Park are subject to the control of the St. Louis County Zoning and Planning Commission.

The statutes authorize the Missouri State Park Board to acquire lands by purchase, gift or condemnation to be held and maintained for park purposes (Section 253.040, RSMo), to construct suitable public facilities on such land (Section 253.080, RSMo), and to accept the donation to the state of the Dr. Edmund A. Babler State Park in St. Louis County (Sections 253.350 and 253.360, RSMo).

We can find no express or inferential provision in the statutes pertaining to the state parks that the discretion therein vested in the State Park Board shall be subject to or limited in any way by local governments (compare, for example, Section 99.130, RSMo, which provides in part, "All housing projects of an authority shall be subject to the planning, zoning, sanitary and building laws, ordinances and regulations applicable to the locality in which the housing project is situated. . . .").

Accordingly, we are of the opinion that the St. Louis County Planning and Zoning Commission has no jurisdiction over the development of the Dr. Edmund A. Babler Memorial State Park.

Yours very truly,

JOHN C. DANFORTH  
Attorney General