September 22, 1971

OPINION LETTER NO. 403
Answer by Letter - Klaffenbach

FILED
403

Honorable Robert A. Young
Missouri Senate, District 24
3500 Adie Road
St. Ann, Missouri 63074

Dear Senator Young:

This letter is in response to your opinion request which is stated as follows:

> "Clarification and ruling under Article 6, Section 18c of special charters, 1945 Missouri Constitution Revised 1961, with respect to proposed county-wide elections for the purpose of authorizing the county governing body to provide the terms upon which the county shall perform the services and functions of:
>
> (a) Uniform regulation and enforcement of building construction throughout the county,
>
> (b) Adoption and enforcement of a minimum housing code throughout the county,
>
> (c) Creation of a police standards commission; to provide for the establishing of minimum performance standards for police departments within the county.
>
> "Specific clarification is requested concerning the manner of acceptance or rejection of these proposed ordinances by the electors.
>
> "Is a simple majority vote required in each separate municipality, or political subdivision in the county?

> "Can acceptance or rejection of these proposed ordinances be determined legally on the basis of a total county vote? Superiority of the ordinances of a city or municipality, versus ordinances of county when in apparent conflict. Which is the higher legal entity, and which charter is superior?"

We first wish to call to your attention that the amendment to Section 18(c) of Article VI of the Missouri Constitution was adopted at the general election November 3, 1970. The amended section is as follows:

> "The charter may provide for the vesting and exercise of legislative power pertaining to any and all services and functions of any municipality or political subdivision, except school districts, in the part of the county outside incorporated cities; and it may provide, or authorize its governing body to provide, the terms upon which the county may contract with any municipality or political subdivision in the county and perform any of the services and functions of any such municipality or political subdivision.
>
> "The charter may provide for the vesting and exercise of legislative power pertaining to any and all services and functions of any municipality or political subdivision, except school districts, throughout the entire county within as well as outside incorporated municipalities; any such charter provision shall set forth the limits within which the municipalities may exercise the same power collaterally and coextensively. When such a proposition is submitted to the voters of the County the ballot shall contain a clear definition of the power, function or service to be performed and the method by which it will be financed."

We do not have the particular proposals that you mentioned in front of us and therefore do not pass upon the precise question as to whether or not they fall within Section 18(c) of Article VI. With respect to the County Charter, it is clear that under Section 18(b) of Article VI of the Missouri Constitution:

> "<u>The charter shall provide for its amendment</u>, for the form of the county government, the number, kinds, manner of selection, terms of

> office and salaries of the county officers, and for the exercise of all powers and duties of counties and county officers prescribed by the constitution and laws of the state." (Emphasis added)

We note also that Article X of the St. Louis County Charter with respect to such amendments provides in part:

> "Section 10.010. This charter may be repealed, revised or amended in any one of the following ways:
>
> (1) In the manner provided in the state constitution for the framing and adopting of a county charter;
>
> (2) By ordinance adopted by the council and submitted to the voters at a general or special election and approved by a majority of those voting on the proposition;
>
> (3) By petitions setting forth the proposal and adopted by the voters in the manner hereinafter provided. Such petitions shall be signed by qualified voters equal in number to at least five percent of the total vote cast for governor in each of the council districts at the last election at which a governor was chosen. Each petition shall contain the full text of the proposal and an enacting clause which shall read as follows: 'Be it resolved by the people of St. Louis County that the county charter be amended (or repealed, or revised):'. The petitions shall be filed with the office or officer charged with conducting elections in the county which shall determine their sufficiency. The proposal shall be submitted to the voters at the next general election occurring not less than ninety days after the petitions are filed. An affirmative vote of a majority of those voting on any proposal shall be sufficient for its adoption;
>
> (4) By direct submission by charter commission to the qualified voters in the manner hereinafter provided."

Therefore, under Section 18(c) of Article VI of the Missouri Constitution the Charter may provide for the vesting and exercise of legislative power as prescribed therein. Under Section 18(b)

of Article VI, amendments to the Charter in implementation of Section 18(c) of Article VI must be made pursuant to the Charter provisions providing for Charter amendments. We conclude with respect to your question as to the adoption of such Charter amendments that any amendment to the Charter will either be adopted or rejected by the voters of the County and that it is immaterial as to how the voters of any particular municipality or political subdivision vote.

With respect to your question asking whether the provisions of the County Charter or of the charter of a city within the County prevail if there are contradictory provisions in such charters, it is clear that under the provisions of the second paragraph of Section 18(c) of Article VI of the Missouri Constitution the provisions of the County Charter prevail.

Very truly yours,

JOHN C. DANFORTH
Attorney General