

CIVIL DEFENSE: The obligation to provide emergency
CITIES, TOWNS & VILLAGES: planning coordination applies to
CONSTITUTIONAL CHARTER CITIES: all political subdivisions in Mis-
souri, including constitutional
charter cities. Insofar as Section 44.080 designates the execu-
tive officer of a political subdivision as the person responsible
for civil defense planning, it is inapplicable to constitutional
charter cities. Each charter city is entitled to designate the
person responsible for supervision of its civil defense obligation.
With regard to the city of Springfield, the terms of its Charter
presently would appear to empower only the city manager to super-
vise or carry out these functions, but other provision could be
made by amending the Charter.

OPINION NO. 17

March 13, 1973

Major General L. B. Adams
Adjutant General
Post Office Box 116
Jefferson City, Missouri 65101



Dear General Adams:

This is in response to your opinion request which stated the following questions:

"Do Missouri statutes relating to disasters or emergencies, primarily Chapter 44 RSMo., apply to the City of Springfield and other cities which operate under a City Charter?"

"Is the Mayor or City Manager the 'executive official' and which would become the Director of Emergency Operations (See State Disaster Operations Plan) upon declaration of an emergency by the Governor?"

Your first question concerns the application of the emergency planning provisions found in Chapter 44 of the Missouri Statutes to cities having a charter form of government pursuant to Article VI, Section 19 of the Missouri Constitution.

Section 44.080, RSMo 1969, provides in part as follows:

"1. Each political subdivision of this state shall establish a local organization for disaster planning in accordance with the state survival plan and program. . . ."

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The answer to your first question will depend on whether a constitutional charter city is a political subdivision within the meaning of Section 44.080. In this regard, Section 44.010, RSMo 1969, defines political subdivision as "any county or city, town or village, or any fire district created by law."

Article VI, Section 19 of the Missouri Constitution provides the manner in which city government by charter can be established for any city with more than five thousand inhabitants. Section 19 (a) states the powers of such constitutional charter cities as follows:

"Any city which adopts or had adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the Constitution of this State and are not limited or denied either by the charter adopted or by statute. Such a city shall, in addition to its home rule powers, have all powers conferred by law."

Under this provision, Springfield and other constitutional charter cities have the responsibilities imposed upon cities by statute. These responsibilities include those conferred upon political subdivisions under Chapter 44 of the Missouri Statutes, which defines political subdivision to include cities. We conclude, therefore, that pursuant to Section 44.080, each political subdivision, including constitutional charter cities, is required to establish a local disaster planning organization.

Your second question asks whether the mayor or the city manager is the "executive officer" responsible for coordinating civil defense efforts in Springfield. Section 44.010(7), RSMo 1969, defines executive officer of a political subdivision as ". . . the county court or county supervisor or the mayor or other manager of the executive affairs of any city, town, village or fire protection district." The responsibilities of that executive officer are described in Section 44.080, RSMo 1969, which provides as follows:

"1. Each political subdivision of this state shall establish a local organization for disaster planning in accordance with the state survival plan and program. The executive officer of the political subdivision shall appoint a coordinator who shall have direct responsibility for the organization, administration and operation of the local disaster

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planning for civil defense, subject to the direction and control of the executive officer or governing body. Each local organization for disaster planning shall be responsible for the performance of civil defense functions within the territorial limits of its political subdivision, and may conduct these functions outside of the territorial limits as may be required pursuant to the provisions of this law.

"2. In carrying out the provisions of this law, each political subdivision may:

(1) Appropriate and expend funds, make contracts, obtain and distribute equipment, materials, and supplies for civil defense purposes; provide for the health and safety of persons, including emergency assistance to victims of any enemy attack, the safety of property; and direct and coordinate the development of disaster plans and programs in accordance with the policies and plans of the federal and state disaster and emergency planning;

(2) Appoint, provide, or remove rescue teams, auxiliary fire and police personnel and other emergency operations teams, units or personnel who may serve without compensation;

(3) In the event of enemy attack, waive the provisions of statutes requiring advertisement for bids for the performance of public work or entering into contracts."

In determining which officeholder is the executive required to carry out these responsibilities, we must consider the effect of Article VI, Section 22 of the Missouri Constitution, which provides as follows:

"No law shall be enacted creating or fixing the powers, duties or compensation of any municipal office or employment, for any city framing or adopting its own charter under this or any previous Constitution, and all such offices or employments heretofore created shall cease at the end of the terms of any present incumbents."

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It is the opinion of this office that application of Article VI, Section 22 precludes the legislature from designating which city official of a constitutional charter government is responsible for carrying out the obligations imposed by Section 44.080. This conclusion is supported by the holding in State ex rel. Burke v. Cervantes, 423 S.W.2d 791 (Mo. 1968). Although the establishment of a civil defense network is a matter of statewide concern, the Missouri constitutional provision limiting interference with home-rule municipalities prevents the legislature from designating which constitutional charter city officer is charged with the local civil defense responsibility. Springfield, as a constitutional charter city, is entitled to determine under whose supervision its civil defense obligation will be met.

Under the present Springfield Charter, it would appear that the city manager is the only officer who could designate a local civil defense coordinator by virtue of the various provisions describing his duties and powers. Section 1.2 of the Springfield Charter provides that the city manager is the official "who shall execute the laws and administer the government of the city." His duties are listed in Section 3.3 of the Charter as follows:

"The city manager shall be the chief executive and administrative officer of the city and shall be responsible to the council for the proper administrative [sic] of all of the city's affairs. . . ."

This section also enumerates the powers of the city manager, which include, in pertinent part, the following:

- (1) to appoint and remove officers and employees of the city;
- (2) to prescribe powers and duties of officers and employees not otherwise described in the charter or city ordinances.

A superficial examination of the Springfield Charter might indicate that the mayor was contemplated by the framers of the Charter as the official who should be charged with the civil defense responsibility; Section 2.6 provides in part as follows:

". . . He shall preside at all meetings of the council and shall be recognized as head of the city government for all legal and ceremonial purposes and by the governor for purposes of Military Law. . . ."

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But the mayor's duties, other than those required of each council member, are expressly non-administrative according to Section 2.6; he is, however, recognized as head of the city government for legal and ceremonial purposes. In addition, he is to be recognized by the governor as the head of city government "for the purposes of Military Law." Although military law might be construed to include civil defense activities, the present provisions of the Springfield Charter, read in light of Chapter 44, preclude that construction.

Section 44.010(1) defines civil defense as ". . . government at all levels performing emergency functions, other than functions for which military forces are primarily responsible." Military forces are governed by military law, and ". . . Military law is enacted for the organization, government, and discipline of troops and applies only to persons in military service. . . ." Bishop v. Vandercook, 200 N.W. 278, 280 (Mich. 1924). It is clear that functions for which the military is primarily responsible are not within the civil defense activities contemplated by Chapter 44. Hence, the Springfield Charter recognizing the mayor as head of city government for the purposes of military law does not impose on the mayor any responsibilities associated with civil defense.

Moreover, Section 3.3 of the Springfield Charter describes the city manager as the chief executive and administrative officer of the city, responsible to the council for the conduct of city affairs. Section 2.6 expressly provides that the mayor "shall have no regular administrative duties." In addition, Section 44.080, RSMo 1969, requires that each political subdivision have a coordinator responsible for local disaster planning. Only the city manager is empowered to administer the local civil defense program by virtue of his broad supervisory functions and the grant of exclusive power under Charter Section 3.3 to appoint and remove city officers and employees. Furthermore, Section 2.8 of the Springfield Charter expressly prohibits the city council or individual members thereof from directing or requesting the appointment or removal of any person from office or employment in the city. Indeed, the consequence of violating this provision is forfeiture of office. We, therefore, conclude that the Springfield Charter in its present form empowers only the city manager to administer or establish the local civil defense program.

CONCLUSION

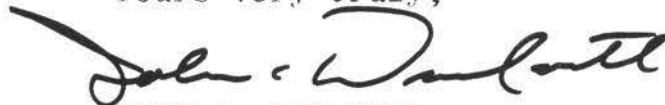
It is the opinion of this office that the obligation to provide emergency planning coordination applies to all political subdivisions in Missouri, including constitutional charter cities. Insofar as Section 44.080 designates the executive officer of a political subdivision as the person responsible for civil defense planning, it is inapplicable to constitutional charter cities.

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Each charter city is entitled to designate the person responsible for supervision of its civil defense obligation. With regard to the city of Springfield, the terms of its Charter presently would appear to empower only the city manager to supervise or carry out these functions, but other provision could be made by amending the Charter.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Karen Harper.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, sweeping initial "J".

JOHN C. DANFORTH
Attorney General