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JEFFERSON CITY

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OPINION LETTER NO. 182

Honorable Lawrence J. Lee
Missouri Senate
330 State Capitol Building
Jefferson City, Missouri 65101

Dear Senator Lee:

This is in answer to your recent opinion request in which you propounded the following question:

> "Does a statute enacted in 1927, and still in the statutes, become unenforceable when, upon adoption of the 1945 Constitution, this statute is in direct conflict with a provision of that constitution?"

You have not set forth any specific statutory provisions nor constitutional provisions. Therefore, our answer can only be one of general law.

The general rule as to the validity of statutory provisions contrary to a constitutional provision is found in the case of Curators of Central College v. Rose, 182 S.W.2d 145 (1944), where the Supreme Court of Missouri held, l.c. 148:

> ". . .'If a previous law conflicts with a new constitutional provision, the law withers and decays and stands for naught, as fully as if it had been specifically repealed.' State ex rel. Goldman v. Hiller, Mo.Sup., 278 S.W. 708, 709; State ex rel. Dengel v. Hartmann, 339 Mo. 200, 96 S.W.2d 329."

However, the rule also is that if the constitutional provision is intended as a limitation only on future legislation, it

does not affect a statute in effect when such constitutional provision is adopted. In the case of County of Ralls v. Douglass, 105 U.S. 728 (1881), the United States Supreme Court said, l.c. 731:

> ". . .The Supreme Court of Missouri has many times decided, and this court, following such decisions, has always held, that the provision in the State Constitution of 1865, art. 11, sect. 14, prohibiting a county from becoming a stockholder in or loaning its credit to a corporation without a vote of the people, was intended as a limitation on future legislation only, and did not operate to repeal enabling acts in existence when the Constitution took effect. State v. Macon County Court, 41 Mo. 453; Kansas City, &c. Railroad Co. v. Alderman, 47 id. 349; State v. County Court of Sullivan County, 51 id. 522, decided in 1873, in which it was said, 'it has always been held that the provision of the Constitution, art. 11, sect. 14, was a limitation upon the future power of the legislature, and was not intended to retroact so as to have any controlling application to laws in existence when the Constitution was adopted;' State v. Greene County, 54 id. 540; County of Callaway v. Foster, 93 U.S. 567; County of Scotland v. Thomas, 94 id. 682; County of Henry v. Nicolay, 95 id. 619; County of Cass v. Gillett, 100 id. 585. . . ."

In the case of State ex rel. Harrison v. Fraizer, 11 S.W. 973 (1889), the Supreme Court of Missouri said, l.c. 973:

> ". . .The constitutional declaration regarding the power and duty of the general assembly, in respect of the registration of voters, is, by its terms, evidently designed to have a prospective operation only. It does not purport to repeal any existing law such as is here under discussion, nor do we think any such purpose can be fairly inferred from its language, especially when we consider that, unless such an intent is evident beyond reasonable question, we should assume, as a rule of construction, that only a prospective operation of the constitution was contemplated. Shreveport v. Cole, 129 U.S. 36, 9 Sup.Ct. Rep. 210. . . ."

It was held by the Supreme Court of Missouri in the case of Trustees of William Jewell College of Liberty v. Beavers, 171 S.W.2d 604 (1943), that a statute passed by the Missouri Legislature in 1851 exempting real estate held or acquired by William Jewell College from taxation became a part of the charter of such college and could not be repealed by any subsequently adopted state constitutional provisions because to do so would violate the provisions of Section 10 of Article I of the United States Constitution providing that no state shall pass any law impairing the obligation of contracts. In such case the court further held in answer to the contention that there was in existence at the time the exemption statute was passed, a general law providing that any tax exemption was revocable that the intent of the provisions in the 1865 and 1875 Constitutions providing that no property except that specifically provided for therein could be exempted from taxation was prospective only. The court said, l.c. 609, quoting from the case of State ex rel. Dosenbach v. St. Jospeh's Convent of Mercy, 116 Mo. 575, 22 S.W. 811:

> ". . .'We are unable to see why the constitution of 1875 should receive, as to these sections, a different construction from that of 1865. As to prospective legislation, they are both clear and specific, but in neither do we discover any intention that they should act retrospectively. " " "
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> "'It would be violative of this almost universal canon of construction to hold that these general affirmative provisions should have a retroactive effect, and that they repeal this exemption, under the general language of the constitution in the section quoted.'"

As stated above, we make no ruling as to whether any specific statute allegedly contrary to some constitutional provision is invalid but we have set forth above the general principles to be applied in making such determination.

Very truly yours,

JOHN C. DANFORTH
Attorney General