



OFFICES OF THE
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March 20, 1975

- OPINION LETTER NO. 39

Honorable Christopher S. Bond
Governor of Missouri
Executive Office
State Capitol Building
Jefferson City, Missouri 65101

Dear Governor Bond:

This letter is in response to your question asking:

"Article VIII of the Charter of the City of St. Louis establishes a civil service system. Can the State place the employees of the Collector's Office of the City of St. Louis, a 'county office', under that civil service system by statutory provisions."

The principal objection to such legislation would be the prohibition of Article VI, Section 22, Missouri Constitution. It appears, however, that the Supreme Court of Missouri in its opinion of February 21, 1975, concerning the establishment of a City of St. Louis medical examiner, State ex rel. McClellan v. Godfrey, No. 58894 (Mo. Banc February 21, 1975), has ruled on the point. The pertinent portion of that opinion follows:

"A separate issue is whether § 58.760 (4) is unconstitutional as imposing an unlawful responsibility on the mayor of the city of St. Louis. Art. 6, § 22, of this state's constitution declares that:

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 ...

Honorable Christopher S. Bond

"The constitutional vice urged by respondent is that the statute in question here imposes on, or allows, the mayor the right not only to call the election but to appoint a medical examiner and to fix the latter's compensation. This is allegedly an unconstitutional interference with the exercise of the duties of a municipal office in a charter city.

"The key to the applicability of Art. 6, § 22, is the distinction between municipal offices and county offices. The constitutional provision covers only 'municipal office ... for any city.' The same question was resolved in *Stemmler v. Einstein*, supra, and *Preisler v. Hayden*, supra. Therein, it was decided that the status of a county office or officer was not subject to the restrictions found in § 22 of Art. 6. Relators are correct in urging that: '[t]here can be no question that the office of Medical Examiner ... is a county office; it replaces the county office of coroner.' The activity of the mayor, called for by the Act, creates no constitutional violation because such activity does not involve the city of St. Louis in its capacity as a city but as a county. In that capacity the mayor is subject to the general laws of the state. *State ex rel. Burke v. Cervantes*, 423 S.W. 2d 791 (Mo. 1968), relied on heavily by respondent, is clearly distinguishable in that it dealt with city policemen and firemen in connection with city affairs. The point is ruled against respondent."

Although we do not have the precise content of the legislation to which you refer, it is our view that the above holding appears to remove the objection of Article VI, Section 22; and, consequently, it is probable that the court would sustain such legislation under such holding.

Yours very truly,



JOHN C. DANFORTH
Attorney General