CITIES OF THE FOURTH CLASS - Two questions of extension of boundaries.
COURTHOUSES- Right of County Court to sell.

July 10th, 1939.

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Honorable William Anderson,
Director,
Missouri State Planning Board,
Jefferson City, Missouri.

Dear Sir:

This will acknowledge receipt of your letter of recent date in which you submit four (4) questions for our opinion. We shall answer your questions in the order set out in your letter.

I.

HOW MUCH TERRITORY, IN ACRES, CAN A CITY OF THE FOURTH CLASS VOTE INTO ITS PRESENT CITY LIMITS?

Section 6947 R. S. Mo. 1929 provides in part as follows:

> "The mayor and board of aldermen of such city, whether the same shall have been incorporated before becoming a city of the fourth class or not, with the consent of a majority of the legal voters of such city voting at an election therefor, shall have power to extend the limits of the city over territory adjacent thereto, and to diminish the limits of the city by excluding territory

> therefrom, and shall, in every case, have power, with the consent of the legal voters as aforesaid, to extend or diminish the city limits in such manner as in their judgment and discretion may redound to the benefit of the city: * * * * *"

It will be seen from the foregoing section of the statutes that no limit is placed on the amount of land which may be voted into a city of the fourth class. The mayor and board of aldermen, with the necessary approval of the voters, may extend the limits of the city over territory adjacent to the city in such manner as in their judgment and discretion may redound to the benefit of the city. How much adjacent territory shall be taken into a city of the fourth class is left to the discretion of the mayor and board of aldermen, subject to the approval of the majority of the legal voters of the city. The courts have held, however, that even though this grant of power to the city is a broad one, yet the actions of the city in extending its limits is subject to the power of the courts to nullify for unreasonableness. In other words, if the city undertakes to extend its limits in an unreasonable manner, the courts can declare such attempted extension void. (See State ex rel. vs. Birch, 186 Mo. 205, State ex rel. vs. City of West Plains, 163 Mo. App. 166). As to what extension is reasonable will be discussed under Division II of this opinion.

CONCLUSION

In answer to your first question, we would therefore say that it is the opinion of this department that a city of the fourth class can vote into its limits as many acres of land as may be decided upon by the mayor and board of aldermen and consented to by the majority of the legal voters of the city, subject to the condition that the extension of the city limits must be reasonable. What is reasonable in each case is a question of fact.

II.

CAN THE PRESENT CITY LIMITS BE EXTENDED BY A STRIP SOME 20 OR 30 FEET WIDE FROM ITS PRESENT SITE TO THE NEW SITE WHICH MAY BE LOCATED FROM ONE TO SIX MILES FROM THE PRESENT SITE?

To answer this question we must determine whether the proposed extension would be reasonable. Your inquiry does not contain any facts about the kind or character of the land proposed to be included in the extension. It is, therefore, impossible for us to say definitely whether the proposed extension would be reasonable. However, we will point out the rules by which the courts determine whether extensions of city limits are reasonable and then make some observations.

In the first place, ordinances extending city limits are presumed to be reasonable and those asserting their unreasonableness have the burden of proving same. In the case of Hislop v. Joplin, 250 Mo. l. c. 599, the Supreme Court said:

> "Since it was within the statutory power of the council to provide by ordinance for the extension of the city limits the particular ordinance here involved is presumed to be reasonable and valid until that presumption is overthrown by evidence which clearly shows the contrary and courts will not 'look closely into mere matters of judgment where there may be a reasonable difference of opinion.' (City of St. Louis v. Weber, 44 Mo. l. c. 550; Copeland v. St. Joseph, 126 Mo. l. c. 431; 2 Dillon on Mun. Corps., sec. 649.) The burden was upon plaintiffs to prove facts clearly establishing the unreasonableness of the ordinance assailed."

The rule by which courts determine whether those asserting the unreasonableness of an ordinance extending city limits have met the burden of proof was set out in the case of State ex Inf. v. Kansas City, 233 Mo. l. c. 213, in the following language:

> " '1. That the city limits may reasonably and properly be extended so as to take in contiguous lands (1) when they are platted and held for sale or use as town lots, (2) whether platted or not, if they are held to be brought on the market and sold as town property when they reach a value corresponding with the views of the owner, (3) when they furnish the abode for a densely settled community, or represent the actual growth of the town beyond its legal boundary, (4) when they are needed

> for any proper town purpose as for the extension of its streets, or sewer, gas or water system, or to supply places for the abode or business of its residents; or for the extension of needed police regulation, and (5) when they are valuable by reason of their adaptability for prospective town uses; but the mere fact that their value is enhanced by reason of their nearness to the corporation would not give ground for their annexation, if it did not appear that such value was enhanced on account of their adaptability to town use.
>
> " '2. We conclude, further, that city limits should not be so extended as to take in contiguous lands, (1) when they are used only for purposes of agriculture or horticulture, and are valuable on account of such use; (2) when they are vacant and do not derive special value from their adaptability for city uses.' "

The foregoing rule has been followed in all subsequent cases involving the reasonableness of the ordinance extending city limits, some of which are:

Hislop v. City of Joplin, 250 Mo. 588.
Seifert v. City of Popular Bluff, 112 S. W. (2d) 93.
Winter v. City of Kirkwood, 296 S.W. 232.
Algonquin Golf Club v. City of Glendale, 81 S. W. (2d) 1. c. 398.

In the case of State ex rel. v. City of Joplin, 62 S. W. (2d), l. c. 398, the Supreme Court in discussing when the courts could or should hold an ordinance of a city unreasonable, said:

> "If the question of whether or not the territory involved should be included within the city limits was fairly debatable, that is, if there was substantial evidence each way so that reasonable men would differ about its necessity, then the decision of that question was for the city council and the city electorate and not for the court. When the evidence shows a fairly debatable question about the matter, then neither way the question might be decided would be unreasonable. On the other hand, if there was substantial evidence tending to show that there was no fairly debatable question about it, and that reasonable men could not differ about it, but would have to agree that it was not necessary to annex the territory, then a trial court's finding that it was unreasonable would be binding (in spite of testimony to the contrary), and would have to be sustained."

Therefore, to determine whether the proposed extension of the City of Greenville would be reasonable, we may ask ourselves the question, "could reasonable men differ as to whether the extension was necessary?" If they could, then the decision of the city authorities and the electorate would be final on the question. However, if reasonable men would be compelled to say that the extension was not necessary, then the extension would be unreasonable.

We assume from your letter that the people of Greenville have in mind voting to extend their present city limits by adding a strip of land twenty (20) to thirty (30) feet wide extending from the present city limits for a distance of several miles, and at the end of said strip to include a large acreage of land which is at present agricultural land or at least land which has no connection with the present city. We assume that no part of the proposed addition is occupied by any number of citizens of Greenville. We assume further that the present city is not expanding to where additional territory is needed. In short, we assume that the plan in mind is simply to move an entire city by the subterfuge of extending its boundaries.

If our assumptions are correct, we do not believe that the extension proposed would be reasonable. The purpose of allowing cities to extend their boundaries is to allow for normal expansion and growth of the cities and their needs. Territory cannot be added except for such purposes. The land proposed to be taken in is evidently agriculture land which is vacant and does not derive special value from its adaptability for city use.

CONCLUSION.

It is, therefore, the opinion of this department that a city of the fourth class cannot legally extend its limits by voting to take in a strip of land twenty to thirty feet wide from its present boundaries to a new site from one to six miles from the present site and by taking in territory at the end of such strip which has no present connection with the city, and which is not needed to take care of the city's growth and needs.

III.

HAS THE COUNTY COURT THE POWER TO OPTION OR SELL THE PRESENT COURT HOUSE SITE TO THE GOVERNMENT FOR FLOOD CONTROL PURPOSES? IF SO, UNDER WHAT CONDITIONS?

Section 12043, R. S. Mo. 1929 provides as follows:

> "There shall be erected and maintained in each county, at the established seat of justice thereof, a good and sufficient courthouse and jail."

The foregoing section clearly contemplates that there shall be maintained at the county seat a courthouse. If a county had need of a courthouse and there was enough money available to build one, the county court could proceed to build such building. (Section 12056). The purpose of the law is that the county shall have a courthouse at all times. If the county court can sell a courthouse when the county has no other one to use, then the manifest purpose of the law would be defeated. If the county court should sell the present courthouse but could not realize enough from the sale to build a new one, then the county would find itself without a courthouse for an indefinite time. There is no assurance that the people of the county would vote bonds to erect a new courthouse, and experience shows that ordinarily counties do not have a surplus of general funds which could be used for the erection of a courthouse.

We are not unmindful of Section 2078, R. S. Mo. 1929, which reads as follows:

> "The said court shall have control and management of the property, real and personal, belonging to the county, and shall have power and authority to purchase, lease or receive by donation any property, real or personal, for the use and benefit of the county; to sell and cause to be conveyed any real estate, goods or chattels belonging to the county, appropriating

> the proceeds of such sale to the use of the same, and to audit and settle all demands against the county."

This section has been cited as authority for a county court selling swamp lands or other property not being used for county purposes, but we have never found where it has been held to authorize the county court to sell a courthouse, jail or other property actually being used for county purposes. The general rule as to the power of the county court to sell county property is stated thus:

> "Ordinarily, a county cannot, without legislative authority, dispose of real property after it has been acquired and devoted to public service."
> 14 Am. J. 207.

Since, therefore, the county court cannot dispose of the courthouse until another has been provided, it follows that the county court could not option the courthouse. The option could not be effected until the county court had the right to execute a conveyance which would be when another courthouse had been provided. In other words, a sale is necessary to complete the option, and the sale cannot be made until another courthouse is provided. Of course, if a county had sufficient revenue on hand to build a new courthouse, the county court could proceed to build it and when that was done the county court could then sell the old courthouse. Therefore, if a county has enough revenue on hand now and contemplates building a new courthouse, the county court would perhaps be authorized to give an option on its present courthouse to be closed when the new courthouse is complete; otherwise not.

CONCLUSION

It is, therefore, the opinion of this office that a county court cannot sell the courthouse of the county and the site thereof, so long as said courthouse is being used by the county and there is no other courthouse owned by the county. It is also our opinion that the county court cannot give an option on the courthouse of a county unless such county has sufficient funds to build a new courthouse and actually contemplates the building of such new courthouse, said option, in any event, not to be closed until the new courthouse is provided.

IV

HAS THE COUNTY COURT THE RIGHT OR POWER TO RELOCATE AND ERECT A COUNTY COURT HOUSE IN A NEW TOWN SITE, WHICH TOWN WILL STILL BE GREENVILLE IF THE CITY LIMITS CAN BE EXTENDED, OR WILL A VOTE OF THE PEOPLE OF WAYNE COUNTY BE REQUIRED TO REMOVE THE COURT HOUSE FROM ITS PRESENT SITE TO ANY OTHER SPECIFIED SITE WITHIN THE NEW TOWN OF GREENVILLE?

As heretofore pointed out, Section 12043 requires a courthouse to be erected and maintained "at the established seat of justice thereof".

Section 12058, R. S. Mo. 1929, provides in part as follows:

> "The county court of any county in this state shall have power to acquire by purchase, for such county, improved or unimproved real estate for a site for a courthouse, jail or poorhouse or infirmary: **"

Section 12060, R. S. Mo. 1929, reads as follows:

> "The county court shall designate the place whereon to erect any county building, on any land belonging to such county, at the established seat of justice thereof."

Section 12061, R. S. Mo. 1929, provides for the selection of a site by the superintendent of the building in certain cases, but by Section 12063, R. S. Mo. 1929, the county court must approve the selection before the same can be paid for.

Therefore, if a court house is to be erected by a county, the county court can select the exact spot for the location of the building. Such selection would have to be within the town theretofore selected as the county seat. Additions to such town would be a part of the town for this purpose since Section 2 of Article 9 of the Missouri Constitution provides:

> "The General Assembly shall have no power to remove the county seat of any county, but the removal of county seats shall be provided for by general law; and no county seat shall be removed unless two-thirds of the qualified voters of the county, voting on the proposition at a general election, vote therefor; and no such proposition shall be submitted oftener than once in five years. All additions to a town which is a county seat shall be included, considered and regarded as part of the county seat."

If, therefore, a courthouse is to be erected at Greenville, the same could be erected at any site within the original town or within any lawful addition thereto.

CONCLUSION

It is, therefore, the opinion of this department that the county court has the right to select the particular site or piece of ground upon which a courthouse is to be erected and said site may be anywhere within the original town selected as the county seat or within any lawful addition thereto.

Yours very truly,

HARRY H. KAY,
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(ACTING) Attorney General

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