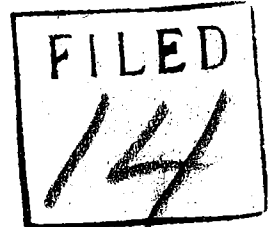


CLASSIFICATION OF CITIES: A municipality of village status, which has an official population of 4,063 can, if it changes its classification, only become a city of the third class.

October 9, 1959



Honorable E. J. Cantrell
Representative, 3rd District
St. Louis County
3406 Airway
Overland 14, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"I am in quest of an official opinion concerning the change from a village form of government to a city form of government.

"In the event that a village with an official population of 4,063 at the last census wishes to adopt a city form of government, can it become a fourth class city, or does it have to elect to become a third class city because of its population?

"The Missouri Statutes do not indicate that a choice of going to a fourth class city is allowed if the village has a population entitling it to become a city of the third class."

We believe that you are correct in concluding that the Missouri statutes do not give a village with the population of the village in which you are concerned the choice of becoming either a third or a fourth class city.

We here note Section 72.070, Mo. R. S. Cum. Supp., 1957, which reads:

"Any city, town or village in this state, existing by virtue of the

Honorable E. J. Cantrell

present general law, or by any local or special law, may elect to become a city of the class to which its population would entitle it under the provisions of sections 72.010 to 72.140, by passing an ordinance or proposition, and submitting the same to the legal voters of such city, town or village, at an election to be held for that purpose, not less than twenty days nor more than thirty days after the passage of such ordinance or proposition; and if a majority of such voters voting at such election shall ratify such ordinance or proposition, the mayor or chief officer of such city, town, or village shall issue his proclamation, declaring the result of such election, and thereafter such city, town, or village shall, by virtue of such vote, be incorporated under the provisions of the general law providing for the government of the class to which such city belongs, which class shall be determined by the last census taken, whether state or national. Whenever any village shall elect to become a city of the class to which it is entitled, the officers of such village, until new officers shall be elected and qualified, shall be the officers of such city, with the powers and functions corresponding to the powers and functions of the officers of the former village, the chairman of the board of trustees to act as mayor and the remaining trustees to act as aldermen, with the power to divide the city into wards and to call an election of officers of such city and to submit to the voters of such city in the manner provided by law such other matters or propositions as they may deem proper and as may be authorized by law."

In this connection we also note Section 72.040, RSMo 1949, which reads:

"All cities and towns in this state

Honorable E. J. Cantrell

containing five hundred and less than three thousand inhabitants, and all towns existing under any special law, and having less than five hundred inhabitants, which shall elect to be cities of the fourth class shall be cities of the fourth class."

Inasmuch as the maximum population set forth above is 3,000 and inasmuch as your population is in excess of 4,000, it is clear that the above section is not applicable to your situation.

We also note Section 72.050, RSMo 1949, which reads:

"All towns not now incorporated in this state containing less than five hundred inhabitants, are hereby declared to be villages; provided, that any village in this state now or hereafter having more than two hundred inhabitants may by majority vote of the qualified electors therein elect to become a city of the fourth class."

It seems evident without extended comment that the above section is likewise inapplicable to your situation because of your population.

We also note Section 72.030, RSMo 1949, which reads:

"All cities and towns in this state containing three thousand and less than thirty thousand inhabitants, which shall elect to be a city of the third class, shall be cities of the third class."

Inasmuch as your municipality is contained within the population bracket set forth above it would appear that if you change your classification you have no alternative but to become a city of the third class.

CONCLUSION

It is the opinion of this department that a municipality of village status, which has an official population of 4,063

Honorable E. J. Cantrell

can, if it changes its classification, only become a city of the third class.

The foregoing opinion which I hereby approve, was prepared by my assistant, Mr. Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

HPW:mwl:c