DEFENSE AREAS:
CONSTITUTIONALITY
OF ACT:

Act providing for formation of defense areas and setting up therein public service districts is constitutional.

April 20, 1942

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Hon. Phil M. Donnelly
State Senator
Lebanon, Missouri

Dear Sir:

This is in reply to yours of recent date, wherein you request an opinion from this department on the Constitutionality of an act of the sixty-first General Assembly relating to defense areas; Laws of Missouri 1941, page 493.

The purpose of this Act was to establish areas in the vicinity of military encampments, providing for certain "undertakings" which include building of hospitals, water systems, sewer systems, etc., and for the governing and financing of such undertakings.

Subsection "a" of Section 1 of the Act, defines a defense area as follows:

> "A 'defense area' shall constitute the territory within a radius of fifty miles of a camp, encampment, cantonment, fort, depot, or other establishment of the armed forces of the United States of America within which not less than ten thousand persons are stationed, except the territory contained in any county now or hereafter having a population of not less than two hundred thousand (200,000) nor more than four hundred thousand (400,000) inhabitants."

Subsection "c" of the Act, defines a municipality as follows:

> "The term 'municipality' shall mean any county, school district, city, town, village, township, road district, public

> water supply district or drainage district located in whole or in part within a defense area, except any county now or hereafter having a population of not less than two hundred thousand (200,000) nor more than four hundred thousand (400,000) inhabitants and also except any school district, city, town, village, township, road district, public water supply district or drainage district or other political subdivision or public corporation located within any such county."

Section 2 of the Act, authorizing the governing bodies of such municipalities to acquire, construct, maintain and operate the undertakings described in subsection "b". These undertakings include, hospitals, water systems, and sewer systems.

The Act authorizes the governing body to issue revenue bonds to finance in whole or in part, the costs of acquisition, construction, reconstruction, improvement, betterment or extension of any such undertaking. However, the Act limits the obligation incurred by the issuance of such revenue bonds in the following language, l. c. 495:

> "* * * * provided, no encumbrance, mortgage or other pledge of property of the municipality is created thereby, and provided no property of the municipality is liable to be forfeited or taken in payment of said bonds, and provided no debt on the credit of the municipality is thereby incurred in any manner for any purpose, * * * *."

Section 10 of the Act provides as follows:

> "Revenue bonds issued under this act shall not be payable from or charged upon any funds, other than the revenue pledged to the payment thereof, nor shall the municipality issuing the same

> be subject to any pecuniary liability thereon. No holder or holders of any such bonds shall ever have the right to compel any exercise of the taxing power of the municipality to pay any such bonds or the interest thereon, nor to enforce payment thereof against any property of the municipality, nor shall any such bonds constitute a charge, lien or encumberance, legal or equitable, upon any property of the municipality. Each bond issued under this Act shall recite in substance that said bond, including interest thereon, is payable solely from the revenue pledged to the payment thereof, and that said bond does not constitute a debt of the municipality within the meaning of any constitutional or statutory limitation."

It will be noted that this section of the law is in keeping with the "Special Fund" idea of obligations issued by municipalities. In other words, the holder or such bonds have no right or authority to compel the taxing power of such municipality to pay the bonds or interest thereon or to enforce payment thereof against the property of the municipality nor to consider these bonds as a charge, lien, or encumbrance, legal or equitable, upon the property of the municipality. Such bonds are payable solely from the revenue pledged for the payment thereof and they do not constitute a charge within the meaning of constitutional or statutory limiation.

Section 7 of the Act requires the governing body to create a sinking fund with the earnings of the undertaking for the purposes of paying the bonds and interest thereon, etc.

The first question to be considered here is: Does the Act violate Section 12 of Article 10 of the Constitution? It will be noted from the Act that by Section 3 thereof, before such bonds may be issued, the governing body must have the approval of two-thirds majority of qualified voters.

Section 1 of Article 4 of the Constitution authorizes the General Assembly to enact legislation such as is here under consideration, subject to the limitations of said Section 12 of Article 10 of the Constitution. Said Section 12 of the Constitution limits municipalities in the amount of taxes they may impose and the amount of indebtedness they may incur. If the obligations incurred under the provisions of this Act are debts

of the municipality which would obligate the governing body of such municipality to levy taxes for the payment of same, then it would be in violation of said Section 12 of Article 10 of the Constitution, providing the amount of the bonds exceed the limitation prescribed in said section.

On the question of whether or not the bonds issued under the provisions of this act are obligations of the governing body, such as are contemplated under said Section 12 of the Constitution, we find that a statute containing similar provisions was before our Supreme Court. The court in the case of Sager et al. v. City of Stanberry et al. 336 Mo. 213, 78 S.W. (2d) 431, in speaking of the "special fund doctrine" in that case, the court said, l. c. 438:

> "'Special fund doctrine' is recognized in Missouri, under which city does not create 'indebtedness' within constitutional prohibition by obtaining property to be paid for solely and exclusively from special fund derived from income of property with no liability on part of city to pay such purchase price or any part thereof directly or indirectly with funds raised by taxation.
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> "Contract for purchase of generating equipment by city created 'indebtedness', within constitutional provision, notwithstanding special fund doctrine, where city obligated itself to purchase electricity from itself paying therefor into special fund, since such payments must come from funds raised by taxation, * * *"

Toll bridge revenue bonds issued under the provisions of Laws of Missouri 1933 pages 363, 364, which contains language similar to the language in this act held not to be debts of the municipality. In State ex rel. City of Hannibal v. Smith, State Auditor 74 S. W. (2d) 367.

This department is therefore, of the opinion that the provisions of this Act authorizes the incurring of obligations and the issuance of bonds therefor, come within the "special fund doctrine", and that the act does not violate Section 12 of Article 10 of the Constitution.

On the questionof whether or not this Act violates Section 53 of Article 4 of the Constitution which prohibits the General Assembly from passing any local or special law, we refer to the portion of the definition of "defense area" supra, which is as follows:

> "* * * except the territory contained in any county now or hereafter having a population of not less than two hundred thousand (200,000) nor more than four hundred thousand (400,000) inhabitants."

We also refer to a portion of the definition of the term "municipality", supra, which is as follows:

> "* * * except any county now or hereafter having a population of not less than two hundred thousand (200,000) nor more than four hundred thousand (400,000) inhabitants and also except any school district, city, town, village, township, road district, public water supply district or drainage district or other political subdivision or public corporation located within any such county."

From an examination of a law, we observe that the only county within the state which comes within this excepted class is St. Louis County. For that reason it might be argued that this is class legislation and in violation of said Section 53, supra.

In the construction of a law, we observe the rule that a statute duly enacted by the Legislature is presumed to be constitutional until the contrary appears beyond a reasonable doubt. State v. Cantwell 179 Mo. 261, Ex Parte Long 168 Mo. 203, State v. Aloe 152 Mo. 477.

In the case of Davis v. Jasper County 300 S.W. 493, constitutionality of an act pertaining to the salary of the prosecuting attorney was before the court. This section had a provision in it which applied to certain officers "of all counties in this state, which now contain or may hereafter

contain 80,000 or more inhabitants or less than 150,000 inhabitants, in which circuit court is held in two or more places in said county." (Section 11080 R. S. Mo., 1919)

At the time of the enactment of that Section, Jasper County was the only county in the State which had a population over 80,000 and less than 150,000, in which circuit court was held in more than one place. The court in that case held that the Act did not violate said Section 53 of Article 4 of the Constitution; at l. c. 495 the court quoted from State ex inf. v. Southern, 265 Mo. loc. cit. 286, 177 S. W. 643, as follows:

> "'The rule that a statute which relates to a class of persons or a class of things is general, while one which only applies to particular persons or things is special, has been generally announced in this and other jurisdictions. State ex rel. v. Taylor, 224 Mo. loc. cit. 477, 478 (123 S. W. 892), and cases cited; Elting v. Hickman, 172 Mo. 257 (72 S. W. 700), and cases cited; State ex rel. Dickason v. County Court of Marion County, 128 Mo. 427 (30 S. W. 103, 31 S. W. 23); Lynch v. Murphy, 119 Mo. 163 (24 S. W. 774); State ex rel. Lionberger v. Tolle, 71 Mo. loc. cit. 650.
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> "'It is, however, an essential adjunct of this rule that the classification made by the Legislature shall rest on a reasonable basis and not upon a mere arbitrary division made only for purposes of legislation. State ex rel. v. Roach, 258 Mo. loc. cit. 563 (167 S. W. 1008); Hawkins v. Smith, 242 Mo. loc. cit. 696 (147 S. W. 1042). When this is borne in mind, and a statute is enacted upon a basis justifying its classification and is made to apply to all persons who may hereafter fall within its purview, it is not special legislation.
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> "'The clause of the statute now under review classifies the counties of the state as they should then or thereafter contain more than fifty thousand inhabitants, and should have then or thereafter taxable wealth exceeding forty-five million dollars, or as

> they should adjoin or contain then or thereafter a city of more than one hundred thousand inhabitants.
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> "'It has been repeatedly decided in this state that classification according to population was sufficient to render an act containing such a classification a general law. State ex inf. Crow v. Continental Tobacco Co., 177 Mo. 1 (75 S. W. 737); State ex rel. v. County Court, 128 Mo. loc. cit. 442 (30 S.W. 103, 31 S. W. 23); State ex rel. v. Bell, 119 Mo. 70 (24 S.W. 765). Nor has the rule as to such a standard been altered by the fact that such an act has been found applicable only to one city." (Citing Cases)

The reason for the legislation under consideration here was to provide for such undertakings as are therein described and we submit that the Legislature in making this exception was justified in assuming that such legislation was not necessary in a county such as is described in the exception clauses.

In one of the most recent discussions of this rule by our court, as found in the case of Hull v. Baumann, 131 S. W. (2d) 721, paragraphs 3 and 4, the court said:

> "The appellant contends that the above does not apply because the city of St. Louis is the only city in the state not within a county and, therefore, in the future there can never be a city, not within a county, which has in excess of 700,000 inhabitants, We think the appellant overlooks the fact that the act applies to counties which have or may hereafter have in excess of 700,000 inhabitants, as well as to cities not within a county which have in excess of 700,000 inhabitants. It is certainly possible in the future that we may have a county in this state that may come within the provisions of this act by virtue of its having in excess of 700,000 inhabitants. We think this fact makes the act a general and not a special law. This act deals with the collection

> of delinquent taxes on real estate. The collection of taxes on real estate has been delegated to the various counties of this state. While it is true the city of St. Louis is a city, yet it performs many functions that are performed by a county. For instance, it has a collector, assessor, recorder and sheriff, the same as all the counties of this state. In so far as its classification is concerned, the act is a general and not a special law.
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> "'But a law general so far as population is concerned may be a special law if the classification made therein is unnatural, unreasonable, and arbitrary so that the act does not apply to all persons, objects, or places similarly situated. State ex rel. Saline County v. Wilson, 288 Mo. 315. 232 S. W. 140.' State ex rel. Hollaway v. Knight, supra, 21 S. W. 2d 767, loc. cit. 769."

It cannot be successfully maintained that this legislation is not prospective because it provides any county now or hereafter coming within that class would be exempted from the provisions of the act.

In volume 12 C. J. page 1150, section 880, the rule concerning discrimination as to localities is stated as follows:

> "Municipal regulations or statutes applying to certain localities only, and not to others, based on the practical necessities of administration in dealing with a population unequally distributed over the state, do not conflict with the equality clause of the fourteenth amendment. Thus different rules may be prescribed by statute for territory included in municipal corporations

> and that not so included. Also counties and municipal corporations may be divided into classes based on population, and laws may be enacted to apply only to those of a certain class. Such a statute is not rendered void by reason of the fact that a class of municipalities as defined by statute includes only a single member, and a statute which applies to one city only, by name, does not deny the equal protection of the laws where it is based on some real distinction between the city named and the other territory of the state. * * *"

Another reason for the lawmakers having exempted such counties is that House Bill 329, Laws of Missouri 1941 page 557, was before the General Assembly at the same time. This bill, provides for a sewer system in counties of the class excepted in said Senate Bill 171, under which your city is attempting to operate.

CONCLUSION

We are, therefore, of the opinion that this Act is general in its nature and is not discriminatory and is not in violation of Section 53 of Article 4 of the Constitution.

In your letter, which was received after the above opinion had been dictated, you ask the question of whether or not a city owning its own municipal plant can issue revenue bonds for the purposes mentioned in the Act. The writer having been familiar with the case of Bell v. City of Fayette, 28 S.W. (2d) 356, particularly calls your attention to that case. In the above case, the city owned its own municipal plant. It contracted for the purchase of diesel engines which engines were to be paid for out of the earnings of these engines. The contract prevented any of the general revenue or property of the city of Fayette from being pledged to pay for the installments on the engines. In that case, the court held that even though the city owned its own municipal plant, it could enter into contract for the purchase of additional equipment, the payment for which was to be made out of the earnings of the new equipment.

We think that this Act is so drawn that a municipality which owns its own plant and extends same may provide for such extension and the payment therefor, out of the earnings of the extension. We think such an obligation would not be a debt, such as is contemplated by Section 12 of Article 10 of the Constitution.

Respectfully submitted

TYRE W. BURTON
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