CITY OF ST. LOUIS:

City of St.Louis cannot reduce number of employees of elective office by appropriating less than amount as fixed for number of employees by ordinance.

July 3, 1935.

7-24

FILED
25

Hon. John P. English,
Recorder of Deeds,
St. Louis, Missouri.

Dear Sir:

This department is in receipt of your request for an opinion as to the following:

> "Whether or not the Recorder of Deeds of the City of St. Louis is a state office within the meaning of the statutes and has the right to appoint as many deputies as he sees fit - and, whether or not the Recorder of Deeds of the City of St. Louis has the right to appoint as many deputies as he sees fit - and, whether or not the City of St.Louis has the right to reduce the number of deputies or employees in the office of Recorder of Deeds by appropriation or otherwise."

In the original organization of the State of Missouri under Sec. 11889, R.S. Mo. 1929 the State of Missouri is divided into one hundred fourteen counties and the City of St. Louis (Sec. 11995). We shall first discuss the question of whether or not you, as Recorder of Deeds, are to be treated in the light of a state officer or a city officer, although we believe, in our ultimate conclusion, the question of whether or not you are a state officer will have little or no bearing on the question.

The question of whether or not the Collector of Revenue of the City of St. Louis, along with the various other officers of the City of St. Louis, was a state (county) officer under the St. Louis Charter of 1876, and the constitutional provisions as they relate solely to St. Louis, are fully discussed in the case of State ex inf. v. Koeln, 270 Mo., l.c. 183, as follows:

"In opposition to this view, however, both the relator and respondent in their briefs contend that the Collector of Revenue for the city of St. Louis is a State (county) officer and his election is to be governed by the statutes of the State and that since the statutes of the State made no provision for an election to be held in April, 1913, a legal election was not then held which would entitle the respondent to now hold the office.

"Article 4, section 1, St. Louis Charter of 1876, then in force, was as follows:

> 'The following named city officers shall be elected by the qualified voters of the city, and shall hold their office for a term of four years, and until their successors shall be duly elected and qualified, viz: a mayor, comptroller, auditor, treasurer, register, collector, recorder of deeds, inspector of weights and measures, sheriff, coroner, marshal, public administrator, president of board of assessors, and the president of the board of public improvements.'

"Article 2, section 1, of the same charter provides:

> 'A general election of all elective officers required by this charter, or by any ordinance of this city, shall be held on the first Tuesday in April, 1877, and every four years thereafter, except as otherwise provided in this charter and the scheme.'

"Section 11432, Revised Statutes 1909 (Laws 1905, p. 272),provides:

> 'The offices of sheriff and collector shall be distinct and separate offices in all the counties of this state and at the general election in 1906, and every four years thereafter, a collector, to be styled the collector of the revenue, shall be elected in all the counties of this State, who shall hold their office for four years and until their successors are duly elected and qualified: Provided, that nothing herein contained shall be so construed as to prevent the same person from holding both offices of sheriff and collector.'

"Section 8057, Revised Statutes 1909 (Act of 1879) provides:

> 'Whenever the word "county" is used in any law, general in its character to the whole State, the same shall be construed to include the city of St. Louis, unless such construction be inconsistent with the evident intent of such law, or of some law specially applicable to such city.'

"It will appear from the foregoing quoted sections of the charter and statutes that there is an apparent conflict of law with reference to the election of a collector of the city of St. Louis.

"The following provisions of the Constitution of Missouri, 1875, may be briefly mentioned as applicable, viz: Article 9, section 20, gives to the City of St.Louis the right, in the manner therein designated, to adopt 'a scheme' and 'a charter in harmony with and subject to the Constitution and laws of Missouri,' and provides that the charter and scheme when adopted shall 'take the place of and supersede the charter of St. Louis and

all amendments thereof and all special laws relating to St. Louis County.

"Section 23 of the same article provides that 'such charter and amendments shall always be in harmony with and subject to the Constitution and laws of Missouri...The city as enlarged shall.....collect the State revenue and perform all other functions in relation to the State in the same manner as if it were a county as in this Constitution defined.'

"Section 25, same article provides:

> 'Notwithstanding the provisions of this article, the General Assembly shall have the same power over the city and county of St. Louis that it has over other cities and counties of this state.'

"The process of logic by which is determined whether the Collector of the City of St. Louis is a city officer or a State officer is apt to become confused by reason of the singular and peculiar relationship which the city of St. Louis bears to the State. Loosely speaking any officer elected by the suffrage of the city of St. Louis might be termed a city officer, at least in the sense that he is elected by the vote of the city. The character of the electorate, however, should not necessarily determine the character of the office. The territory confined within the boundaries of the city of St. Louis forms a political subdivision of the State. This territory has no county organization in the ordinary use of that term, but by the Constitution the said city is to 'collect the state revenue and perform all other functions in relation to the State in the same manner as if it were a county as in this Constitution defined.' If this political subdivision of the State were styled a county no confusion

would arise in arriving at the conclusion that the person whose duty it was to collect the State taxes was an officer of the State and that his election would be a subject of legislative control.

* * * *

But was it intended by this constitutional provision that the charter provision thus superseding the said special laws should for all future time be the controlling law upon the subject-matter covered by said special laws? In other words, was it the intention of the Constitution to forever withdraw from general legislative control the right to prescribe the manner of electing a collector of the revenue for the political subdivision of the City of St. Louis? Or was it the intention merely to provide a convenient rule of conduct in such matters until such time as the General Assembly of the State should, in a legal way, otherwise provide? That the latter was intended, is, we think, clearly evident by the language of section 25, supra, appearing in the same article of the Constitution, viz: 'Notwithstanding the provisions of this article, the General Assembly shall have the same power over the city and county of St. Louis that it has over other cities and counties of this State.' (Ewing v. Hoblitzelle, 85 Mo. 64, l.c. 76, et seq.) The following authorities also support the general principles here underlying: State ex rel. v. Railroad, 117 Mo. l.c. 11-12; St.Louis v. Klausmeier, 213 Mo. 119, l.c. 129-130; Peterson v. Railroad, 265 Mo. 462, l.c. 504.

"That the General Assembly has the power to legislate with reference to the subject of electing collectors of revenue in the different counties of the State there can be no doubt. Having that

> power over the respective counties, it necessarily follows from the above constitutional mandate that it also has this same power over the political subdivision of the State known as the City of St. Louis."

The City of St. Louis, being a city within itself, having none of the ordinary attributes of a county, and having amended its charter and voted new charters under its constitutional powers, it is difficult to apply the various decisions affecting its city organization and harmonizing with the ordinary county organization.

In view of the decision above quoted, which relates to the Collector of Revenue of the City of St. Louis, we hold that it is applicable also to the Recorder of Deeds of St. Louis and that said office of Recorder of Deeds is a State (county) office. Disregarding the fact that the Recorder of Deeds of the City of St. Louis may be treated as a State (county) officer, there is no statute under the State of Missouri expressly creating the office of Recorder of Deeds of the City of St. Louis; hence, the office of Recorder of Deeds must receive its origin, not from the Constitution and statutes of Missouri, but from the charter framed in harmony with the constitution.

The status of the Assessor of the City of St. Louis and the effect of the charter of the City of St. Louis adopted by the people on June 30, 1914 is fully discussed in the case of State ex rel. McDaniel v. Schramm, 272 Mo. l.c. 546, as follows:

> "I. Since the adoption of the Constitution in 1875, the city of St. Louis, by virtue of the provision of that instrument, has become a city distinct from the four classes of cities into which all the other cities of the State are divided by the Constitution. It has become, also, the possessor of a distinct charter, the creation and adoption of which was provided for by article 9, sections 20, 22, 23 and 25, of the Constitution of 1875. That instrument further provided, upon the adoption of such charter and the accompanying scheme of separation from the county of St.Louis that the provisions of the new charter should supersede and take the place of all special laws previously applicable in the former territory

of St. Louis County then added to that city by the act of separation, and the previous charters and amendments thereto of the city of St.Louis. It further provided that the charter of St. Louis to be adopted in virtue of its authority, should only be amended in the manner pointed out in that instrument. (Cases cited)

"Recognizing, however, that the territory of the municipality thus authorized--although separated from the county of St. Louis--would continue under the control of the future Legislatures of the State of Missouri in all respects not otherwise provided by the Constitution, an express affirmance of such legislative authority was inserted in the provisions of the Constitution. (Ibid., sec. 25) The City of St. Louis is the only one in the State which by name is authorized by the Constitution to exercise the specific powers granted to it by that instrument. (Ibid., sec. 20) A general enabling act was, however, inserted to embrace other cities which, although not named, should fall within a constitutional class. (Ibid., sec. 16) Cities thus constitutionally chartered form classes distinct and separate from the four divisions prescribed by the organic law (Ibid., sec. 7), and their respective charters have all the efficacy of special grants by the Legislature. (Cases cited)

"The new municipality thus organized adopted by the vote of the people, a charter which provided a complete plan for the government of the city in all of its departments and for the election of officers necessary to put such plan into practical operation.

"No department of the city government was more essential to its sustenance and vigor than that providing a basis for the collection of its revenues. The officer charged with performance of these duties is the assessor of taxes,

nine-tenths of which belong to the City of St. Louis exclusively and without which it could not exist. Incidentally and as a part of his duties, his assessment includes a comparatively insignificant revenue for the State at large. Previous to the adoption of the charter, his election was provided for by laws specially applicable to the county of St. Louis. (Laws 1871-2, p. 88, sec. 21) Upon the adoption of the new charter, that law was substituted by the following provisions: Scheme and Charter, art. 5, sec. 15; Shheme and Charter, art. 4, sec. 1; Scheme and Charter, art. 1, sec. 8.

"The new officer substituted by the charter for the performance of the duties of the assessor of St. Louis County, was designated as 'The President of the Board of Assessors.' His office was declared by the scheme and charter to be a 'city office' and under the control of the city government, and he was required to perform all his duties 'in accordance with the general laws' and his qualifications and duties were specifically prescribed. (Scheme and Charter, art. 5, secs. 17, 18, et. seq.) The date of the elections of the President of the Board of Assessors and other elective officers designated in the scheme and charter, was fixed by that instrument to begin on the first Tuesday in April, 1877, and every four years thereafter. (Scheme and Charter, art. 2, sec. 1) Under the express language of the Constitution, the charter requirements in these respects superseded and took the place of the previous special laws on the subject, applicable to the county of St. Louis. (Constitution 1875, art. 9, sec. 20) In an accordant spirit, the Legislature of the State has never undertaken in any act, to alter or control the election of the President of the Board of Assessors (the successor by charter to the previous assessor of St. Louis County) but in every intervening act has expressly

stated that such act providing for the election of an assessor in other counties of the State, should not include the city of St. Louis. (R.S. 1879, sec. 6678; R.S. 1889, sec. 7524; R.S. 1899, sec. 9137; R.S. 1909, sec. 11341) And in the last of such enactments (the one under review in this case) has explicitly excepted the city of St. Louis. It is under this enactment that respondent claims, after having served four years by election, according to the charter, in the spring of 1913, that he is now entitled, after the expiration of his term, to hold over as appointee of the Governor, because his own and all prior elections for forty years were invalid in that they were held in the fall instead of the spring as was provided by the charter in fixing the date and the beginning of the terms of all officers for the government of the city of St. Louis.

* * *

"Now in the matter in hand the Legislature, as appears from the act under review, in the simplest terms stated that the territory of the city of St. Louis should not be governed by it. Hence, as to so much of the State of Missouri as is contained in the boundaries of that city, there was a total failure on the part of the Legislature to make any law whatever. The present case cannot, therefore, fall within any rule of construction applicable to the separation of a complete act from an invalid portion of the same act; for here the Legislature has refused to make a law extending over the city of St. Louis. Consequently no court can now make a law which the Legislature adjourned without enacting, or, in other words, make a law as to that territory over which the lawmaking body failed and refused to exercise its power of legislation.

"It must not be overlooked in the instant case, that the question to be

solved is not whether the Legislature had the power to act, but whether it did, in fact, legislate as to the territory of St. Louis when the statute under review was passed. The terms of that statute declare to a certainty that such portions of the State's domain was not embraced within the scope of the act. The question as to whether or not it should be included, was directly presented to the Legislature yet the fact is indisputable that the lawmaking body, after consideration of that question, expressly refused to make a law governing it and so stated in the act itself. In view of its express refusal to legislate as to this locality, what the Legislature might have done is a wholly futile inquiry devoid of any logical or legal consequence. The fact that it did not make a law for the City of St. Louis, but positively declined to include that territory, is apparent and undeniable from an inspection of the language and terms of the act under review. Having stamped that decision in the very act itself, it is impossible, except by perversion of its terms and ascribing to its words a meaning which is contrary to their intrinsic sense and import, to hold that the Legislature included or intended to include the city of St. Louis as the subject of the act. It follows that the entire theory of respondent, that the statute under review, upon a holding of the invalidity of the proviso would, without further legislative action, become a different law including the excluded territory, is built upon a tissue of sophisms and fallacies and contradiction of terms relied upon to prove that legislative nonaction meant affirmative action; and exclusion meant inclusion.

* * *

"It is wholly unnecessary to pass upon the contention of respondent that the proviso of the act under review is unconstitutional; for having shown that if so, nothing is left of the act itself as an entirety, since we could not make it apply to the City of St. Louis without

> judicial legislation, it follows upon that conclusion that respondent would have no greater authority to hold the office in question than if the act was constitutional and valid in all respects. In neither case would the election of an assessor for the City of St. Louis be governed by the terms of the act, for if valid as an entirety, St. Louis is excepted from its provisions, and if invalid as to the proviso only, then the legislation in the body of the said act did not extend to the 'subject or territory' of the City of St. Louis and cannot be so enlarged by any process of reasoning or construction in the light of the law as expounded above."

We construe the above decision as applicable to the office of Recorder of Deeds, and in the absence of any statutes of Missouri which create the office of Recorder of Deeds of the City of St. Louis, we must look to the charter and ordinances of the City. The Recorder of Deeds must derive his title from the ordinances and charter of the city unless, treating St.Louis as a county, we may interpret Chapter 74 entitled "Recorders of Deeds", Revised Statutes of Missouri 1929, as applicable thereto, Section 11526 of which (amended by Laws of Mo. 1933, p. 360) provides:

> "There shall be an office of recorder in each county in the state containing 20,000 inhabitants or more, to be styled, 'The office of the Recorder of Deeds.'"

Section 11542, Art. 1, Chapter 74, R.S. Mo. 1929, which refers to the appointment of deputies by the Recorder, provides:

> "In all counties wherein the offices of clerk of the circuit court and recorder of deeds have been or may be separated, the recorder of deeds may appoint in writing one or more deputies, to be approved by the county court of their respective counties, which appointment, with the like oath of office as their principals, to be taken by them and indorsed thereon, shall be filed in the office of the county clerk. Such deputy

> recorders shall possess the qualifications of clerks of courts of record, and may, in the name of their principals, perform the duties of recorder of deeds, but all recorders of deeds and their sureties shall be responsible for the official conduct of their deputies. But no recorder now holding office shall appoint such deputy or deputies until he shall have entered into a new bond to the state in such sum, manner and form as is now required by law."

You will note in the above section that the "Recorder may, in writing, appoint one or more deputies to be approved by the county court of their respective counties." The City of St. Louis has no county court; hence, we cannot interpret this statute to give you the authority to appoint one or more deputies in your office as Recorder of Deeds.

We have incorporated the above sections of the statutes in order to deduct this element from the possibility of the general state statutes governing your office and the appointments incidental thereto.

We return to the conclusion reached in the case of McDaniel v. Schramm, supra, under which we concluded that the office of Recorder of Deeds must in its operation derive its authority from the charter and ordinances of the City of St. Louis. This being our conclusion, what is the authority of the City of St. Louis to determine the number of employees consisting of deputies, assistants, stenographers, etc. by appropriating a sum for seven less than the ordinance, Section 3958, provides. Said section provides:

> "The recorder of deeds shall be and is hereby authorized to appoint the following employees, who shall receive the following monthly salaries, respectively: One chief deputy, three hundred dollars; one cashier, one hundred seventy-five dollars; eight deputies, one hundred seventy-five dollars each; two assistant deputies, one hundred fifty-five dollars each; two indexers, one hundred forty-five dollars each; one

> draftsman; one hundred forty dollars; fourteen comparers, one hundred forty dollars each; one marriage license clerk, one hundred fifty dollars; one assistant marriage license clerk, one hundred twenty dollars; two clerks, one hundred twenty dollars each; ten stenographers, one hundred seven dollars each; two watchmen, ninety dollars each; one record compiler, one hundred dollars; and necessary recording clerks, who shall receive seven and one-half cents per folio of one hundred words. (Ord. 33,076, sec. 1.)"

The above ordinance sets forth the number of employees, deputies, assistants, etc. and fixes the salary of each. The ordinance, if valid, determines that you may appoint the number of each as set forth therein, and it is either a potent ordinance or an impotent one. The Charter of the City of St. Louis is the organic law of the municipal corporation, and it bears the same general relation to the ordinances of the city that the Constitution of Missouri bears to the state statutes (St. Louis v. Dorr, 145 Mo. 466, l.c. 478; Quinette v. St. Louis, 76 Mo. 402), assuming that the ordinance is valid, and we have no reason to question its validity. As was said in the case of Jackson v. The Grand Ave. Railway Co., 118 Mo., l.c. 218,

> "Valid ordinances of municipal corporations are as binding on the incorporators as the general laws of the state on the citizens at large."

In the case of Grand Ave. R'y. Co. v. Citizens' R'y. Co., 148 Mo. l.c. 671, the Court said:

> "****a charter adopted by direct grant of the Constitution itself, has all the efficacy of a legislative enactment, and that if such a power be given to a city by charter framed and enacted by the legislature itself, ordinances passed in obedience to such charters, are laws of the State within such municipality, and are binding upon all persons who come within the scope of their operation, unless they conflict with, and are not in harmony with the Constitution and general laws of the State, * * *"

The City of St. Louis, being under a charter voted by its people and having passed ordinances in conformity with this charter, is on a parity with the General Assembly of the State of Missouri, which passes laws in conformity with the Constitution of the State of Missouri. Therefore, when the Board of Estimate of the City of St. Louis undertakes to reduce the appropriation of the office, i.e., the estimates as to the number of employees you may be entitled to under Sec. 3958 of the General Ordinances, it amounts to legislation by appropriation.

The power of the Legislature of Missouri to inject general legislation of any sort in an appropriation act as being repugnant to the Constitution is discussed in the case of State v. Thompson, 289 S.W., l.c. 340-341, wherein the Court said:

> "What, then, is the effect of section 100 of said Appropriation Act, where it provides that in all cases where the salary of an officer or employee has not been 'definitely fixed by statutory law' the amount paid to such official under the Appropriation Act, cannot exceed the amount of salary paid to the person holding the same position the previous biennium? If the Legislature could go thus far in an appropriation bill, it could go further and fix the salaries of all such officers at a given, definite amount.
>
> "Said section 100 strikes at two classes of officials. That part which undertakes to regulate the payment of such salaries as are definitely fixed by statutory law was perfectly useless, because no more could be paid in any event than the statute had fixed. The last part of said section 100 reads as follows:
>
> > '****And in all cases where the salary of any such official or employee is not definitely fixed by statutory law, no salary paid by virtue of this appropriation act shall be in excess of the salary paid to the officer or employee holding such position the previous biennium.'

"It is mani fest that the real purpose of this provision was an undertaking to regulate, determine, and fix the salaries of all such officers or employees affected by the Appropriation Act whose compensation might not be fixed at all by statutory law, or, if at all, where the statute fixed a maximum only. This provision has no other character than that of general legislation, and to inject general legislation of any sort into an appropriation act is repugnant to the Constitution (article 4, sec. 28, Constitution of Missouri) and the appropriation bill, as provided by the Constitution (article 4, Sec. 28) may have a plurality of subjects, while a bill for general legislation may have but one.

"An appropriation bill is just what the terminology imports, and no more. Its sole purpose is to set aside moneys for specified purposes, and the lawmaker is not directed to expect or look for anything else in an appropriation bill except appropriations. * * * * Here we have an appropriation act which not only appropriates money for the various subjects embraced therein, but which attempts to fix and regulate all salaries affected by the act which either have not been fixed by any statute, or not definitely fixed, which would include all salaries where the maximum alone was named. That the Legislature has the right by general statute to fix salaries is beyond question, but has it the right to do so by means of an appropriation act? We think not."

CONCLUSION

It is the opinion of this department that Section 3958, supra, of the Revised Code or General Ordinances of the City of St. Louis, being an ordinance which gives to your office the number of employees, assistants, deputies, etc., definitely states the salaries of each and entitles you to that number of

employees; therefore the Board of Estimate does not have power, authority or right to reduce that number by failing or refusing to appropriate for the salaries of said employees.

Respectfully submitted,

OLLIVER W. NOLEN
Assistant Attorney General

APPROVED:

ROY McKITTRICK
Attorney General

OWN:AH