

STATUTES: A law applying to counties of certain  
LEGISLATURE: population and under is not a special  
law.

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April 6, 1943

H-21  
Honorable Frank M. Frisby  
Member of Senate  
Jefferson City, Missouri



Dear Sir:

We are in receipt of your request for an opinion, under date of April 1, 1943, which reads as follows:

"I enclose herewith, copy of Senate Bill No. 96 which I introduced in association with Senators Donnelly and Smith of Greene.

"Since the introduction of this measure, a situation has arisen which in our opinion makes it advisable to eliminate Jackson County from the operation of this Bill and it is our thought now to amend the Bill so that it will apply to counties of 150,000 and under.

"The practical operation of this Bill would not affect St. Louis County because of a different system of titles therein, but a question arises as to whether or not this Bill would be legal if we made it apply to counties under 150,000; and we submit this question to you, requesting that you give us an opinion at your earliest convenience."

Your main inquiry is whether or not Senate Bill Number 96 can be amended so that it will apply only to counties of 150,000 population and under, and whether such an amend-

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ment would be a violation of Article IV, Section 53, of the Constitution of Missouri.

Article IV, Section 53, Constitution of Missouri, partially reads as follows:

"The General Assembly shall not pass any local or special law: \* \* \* \*  
(2) Regulating the affairs of counties, cities, townships, wards or school districts: \* \* \* \* \*."

The question involved is whether or not such an amendment which would apply to only counties under 150,000 population would be considered as special law. There are numerous cases which hold such a classification of counties as to population is not a special, but is a general law, providing the bill contains the following words: "Now or hereafter having a population of \* \* \* \* \*."

In the case of *State v. McCann*, 47 S. W. (2d) 95, Pars. 1-2, 329 Mo. 748, the court said:

"Whether an act be local or special must be determined by the generality with which it affects the people as a whole rather than the extent of the territory over which it operates. If it affects equally all persons that come within its operation it cannot be local or special within the meaning of the Constitution. *State ex rel. Garvey v. Buckner*, 308 Mo. loc. cit. 401, 272 S. W. 940. That was said in relation to an act concerning the administration of justice in Jackson County abolishing the criminal court and vesting the jurisdiction of criminal cases in the circuit court.

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"The general rule is that for legislative purposes, other things being equal, counties may be classified according to population. State ex rel. v. Clark, 275 Mo. loc. cit. 107, 204 S. W. 1090."

Also, in the case of Thomas et al. v. Buchanan County, 51 S. W. (2d) 95, Par. 9, 330 Mo. 627, the court said:

"The next point made by certain of the respondents is that the law is local and special in violation of subdivisions 2, 15, and 32 of section 53, article 4, of the Constitution, in that it singles out Buchanan county and attempts to regulate its affairs, creates a special board of estimate, and makes the county court a purchasing agent. It is true the only county in the state which, at this time, has a population between 95,000 and 150,000, is Buchanan county. But this does not make the law local, because the act applies as well to all counties which may hereafter have that population. In other words, the class is fixed, but the counties that fall within it may change as their population fluctuates. That such legislation is not local is established by numerous decisions of this court: Davis v. Jasper County, 318 Mo. 248, 253, 300 S. W. 493, 495; State ex rel. Moseley v. Lee, 319 Mo. 976, 993, 5 S. W. (2d) 83, 90."

Also, in the case of Roberts v. Benson, 142 S. W. (2d) 1058, Pars. 5-6, the court said:

"The rule is sound and is well settled that population may be properly used as the basis for classification in a general law regulating certain cities and counties when such classification is reasonable and germane to the purpose of the law. State ex rel. Gentry v. Curtis, 319 Mo. 316, 4 S. W. 2d 467. We found in the Hull case that population was a natural and reasonable basis for the classification used in the act under consideration for the reason that the Jones-Munger Law does not function in all respects in more populous centers.

"Although this act may apply at the time of its enactment only to one county or to one city because of such classification on population, such fact alone does not make the act a special rather than a general law. Hull v. Baumann, supra.

"The contentions advanced by appellants are identical with those in the Hull case and have been fully considered. They have been decided contrary to appellants' position. We have held the act to be a general law based on reasonable classifications and therefore not repugnant to constitutional provisions.

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#### CONCLUSION

It is, therefore, the opinion of this department, that if Senate Bill Number 96 should be amended to apply only to counties having a population of 150,000 and under, it would not be a violation of Article IV, Section 53, of the Constitution of Missouri.

APPROVED BY:

Respectfully submitted

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WJB:RW