ST. LOUIS:
CONSTITUTIONAL LAW:
CITY CHARTER:

A charter adopted by St. Louis City under provisions of Sec. 32(b) of Article VI of the Constitution cannot include provisions for eliminating or changing the method of selecting officers to fill "county offices".

January 12, 1956

Honorable William E. Hilsman
Senator
Third Senatorial District
5734 Bartmer Avenue
St. Louis, Missouri

Dear Senator Hilsman:

This is in answer to your letter of recent date, requesting an official opinion of this office and reading as follows:

> "Would you please advise me whether or not a Charter for the City of St. Louis could under the present Constitution of the State of Missouri lawfully include provisions for eliminating or changing the method of selecting officers to fill offices prescribed by statute, such as the Treasurer, License Collector, Collector of Revenue, Sheriff, Recorder of Deeds and Clerk of Circuit Court for the City of St. Louis."

Section 31 of Article VI of the Constitution of Missouri provides as follows:

> "Recognition of City of St. Louis as now Existing.-- The city of St. Louis, as now existing, is recognized both as a city and as a county unless otherwise changed in accordance with the provisions of this Constitution. As a city it shall continue for city purposes with its present charter, subject to changes and amendments provided by the Constitution or by law, and with the powers, organization, rights and privileges permitted by this Constitution or by law."

Section 32(b) of Article VI of the Constitution of Missouri provides as follows:

> "Revision of Charter of St. Louis.-- The law-making body of the city may order an election by the qualified voters of the city of a board of thirteen freeholders of such city to prepare a new or revised

> charter of the city, which shall be in harmony with the Constitution and laws of the state, and shall provide, among other things for a chief executive and a house or houses of legislation to be elected by general ticket or by wards. Such new or revised charter shall be submitted to the qualified voters of the city at an election to be held not less than twenty nor more than thirty days after the order therefor, and if a majority of the qualified voters voting at the election ratify the new or revised charter, then said charter shall become the organic law of the city and shall take effect, except as otherwise therein provided, sixty days thereafter, and supersede the old charter of the city and amendments thereto."

Under the clear, plain and unequivocal terms of such sections, it is clear that St. Louis, under the present constitution, as under the Constitution of 1875, has both city and county functions, and that a charter for the City of St. Louis must be in harmony with the constitution and laws of the State of Missouri.

The Supreme Court of Missouri has passed on several cases under the 1875 Constitution on the question of whether or not state statutes providing for the election of "county officers" prevailed over provisions in the city charter of St. Louis, or ordinances enacted thereunder, relating to such offices. Such principles of law are equally applicable under the present Constitution of Missouri.

In the case of State ex inf. Barker v. Koeln, 192 SW 748, the Supreme Court said at l.c. 751:

> "Section 8057, R. S. 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, § 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.' (Italics ours.)

"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.'"

The court further said at l.c. 752:

> "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. * * * * * * * *
>
> "We therefore hold that the act of 1905 (section 11432, supra) applies to the city of St. Louis, and that, at least since the act of 1905, supra, the general statutory law of the state and not the charter of the city controls the matter of electing or filling the office of collector of the revenue for the city of St. Louis."

In the case of State ex rel. Carpenter v. St. Louis, 2 SW2d 713, at l.c. 719, the Supreme Court said:

> "If we are to construe the Constitution as it reads, St. Louis is subject to legislative control in general, just as other cities are. Section 25 was intended to remove all doubt of that.
>
> "This court in many instances has held invalid municipal measures of St. Louis which were inconsistent with general laws. City of St.Louis v. Deisoerner, 243 Mo. 217, loc. cit. 223, 147 S.W. 998, 41 L.R.A. (N.S.) 177; State ex rel. Knese v. Kinsey, 314 Mo. 87, 282 S.W. 437. Some other rulings of this court throw further light upon the subject. The case of State ex rel. Garner v. Mo. & Kan. Tel. Co., 189 Mo. 83, 88 S.W. 41, was a proceeding by mandamus to compel the telephone company to furnish service under an ordinance fixing a maximum rate, and it was held that Kansas City had not been delegated the power under its charter to <u>fix</u> such rates. General observations of the court are pertinent here:
>
> "'There are governmental powers the just exercise of which is essential to the happiness and well-being of the people of a particular city, yet which are not of a character essentially appertaining to the city government. Such powers the state may reserve to be exercised by itself, or it may delegate them to the city, but until so delegated they are reserved. The words in the Constitution (article 9, § 16), "may frame a charter for its own government," mean may

> frame a charter for the government of itself as a city, including all that is necessary or incident to the government of the municipality, but not all the power that the state has for the protection of the rights and regulation of the duties of the inhabitants of the city, as between themselves. Nor does the Constitution confer unlimited power on the city to regulate by its charter all matters that are strictly local, for there are many matters local to the city, requiring governmental regulation, which are foreign to the scope of municipal government. In none of the cases that have been before this court bringing into question the charters of St. Louis and Kansas City under the Constitution of 1875 have we given to this constitutional provision any broader meaning than above indicated.' (Italics ours.)
>
> "No distinction is made between St. Louis and Kansas City regarding charter powers. Further in the same opinion (loc. cit.102 [88 S.W. 43]):
>
> "'The Constitutional grant of power under which the charter is formed says that it must always be subject to the Constitution and laws of the state, which we interpret to mean that in all matters not appertaining to city government the charter is subordinate to the will of the General Assembly.'"

In the case of State ex rel. Dwyer v. Nolte, 172 SW2d 854, the Supreme Court said at l.c. 856:

> "In the case of State ex inf. McKittrick v. Dwyer, supra, the issue was as to the validity of the charter provision giving the Mayor power to appoint the Treasurer. The provision was held void as in conflict with the general statutes in relation to the office of County Treasurers. For like reason, that part of the charter fixing the Treasurer's salary is void, it being repugnant to Sec. 13800. 'When the ordinances or charter provisions are or become in conflict with prior or subsequent state statutes, such ordinances or charter provisions are or become void, and must yield to the higher law.'"

It is clear from the rulings of the Supreme Court in the cases quoted from that the charter of the City of St. Louis cannot provide for the election of county officers provided for by the statutes of this state.

An opinion rendered to the Board of Freeholders which was framing a charter for the City of St. Louis rendered under date of February 9, 1950, has been called to our attention. Such opinion holds that in framing a charter for the City of St. Louis provision for the selection

of county officers can be made in such charter under the provisions of Sec. 18 of Article VI of the Constitution relating to counties of more than eighty-five thousand inhabitants. We are unable to agree with such opinion.

We believe it unnecessary at this time to rule on the question of whether or not a "county" charter, separate and apart from the city charter, authorized by Section 31(b) of Article VI of the Constitution could be framed and adopted under Sec. 18 of Article VI of the Constitution for St. Louis. We are here ruling only on the question of whether or not a charter framed for St. Louis under provisions of Section 32(b) of Article VI of the Constitution could provide for the selection of "county officers".

We believe it to be clear from the provisions of Sec. 18 of Article VI of the Constitution that the charter therein provided for is to be framed by persons chosen as provided in such section, and adopted as provided in such section. Such section contains a complete procedure for the adoption of a county charter. We can find nothing in Sec. 32(b) or Sec. 18 of Article VI of the Constitution, nor in any other section of the Constitution, authorizing the Board of Freeholders of St. Louis chosen under Sec. 32(b) of Article VI of the Constitution to make provision in such charter for the selection of "county officers", as is provided for under Sec. 18 of Article VI of the Constitution. It is our view that Sec. 32(b) and Sec. 18 of Article VI of the Constitution separately provide for the procedure authorized under each section and that a charter framed under Sec. 32(b) cannot contain provisions authorized only by Sec. 18 of Article VI of the Constitution.

CONCLUSION

It is the opinion of this office that a charter framed for the City of St. Louis under the provisions of Sec. 32(b) of Article VI of the Constitution cannot provide for the method of selection of "county officers" provided for by statutes of this state.

The foregoing opinion, which I hereby approve, was prepared by my assistant, C. B. Burns, Jr.

Very truly yours,

John M. Dalton
Attorney General

CBB/ld