

CITIES: : Senate Bill No. 112 of the 68th General
: Assembly which provides, in effect, that
CONSTITUTIONAL LAW: : third class, fourth class and special
: charter cities of Clay and Jackson Coun-
: ties having an organized police and fire
: departments may provide pensions for their
: policemen and firemen, is unconstitutional,
: unless there is some difference between
: those cities in Clay and Jackson Counties
: and other cities of the same type in the
: State, reasonably justifying a differ-
: entiation in the powers granted to such
: cities.



March 17, 1955

Honorable Edgar J. Keating
Member
Missouri Senate
Room 331
State Capitol Building
Jefferson City, Missouri

Dear Senator Keating:

Your letter of March 1, 1955, requesting an opinion of this office reads as follows:

"I am enclosing herewith copy of Senate Bill No. 112 which is pending in the Judiciary Committee of the Senate. I will appreciate an opinion as to the constitutional validity of the rather artificial classification found in lines 1 to 5 of section 1, page 1, of the bill. The bill has had one hearing in committee and has been continued over for additional hearing after your opinion is received. I will appreciate receiving this opinion at your earliest convenience."

The portion of Senate Bill No. 112 of the 68th General Assembly to which you refer provides, in part:

"Municipal authorities, in all cities of the third and fourth classes and special charter in any county having a part of a city of more than four hundred thousand inhabitants having organized police and fire departments,

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may provide, by ordinance, for a pension fund for the pensioning of retired, crippled or disabled members of such departments, and the dependent widows and minor children of deceased members. * * *."

It is noted that the Bill does not clearly indicate whether it is applicable to all cities of the third and fourth classes throughout the State, and special charter cities in the type of county specified, or whether the Bill is intended to be applicable only to those third and fourth class and special charter cities in the type of county mentioned. It is our understanding, however, that the Bill was intended to cover only third and fourth class and special charter cities (having organized police and fire departments) in counties having a part of a city of more than four hundred thousand inhabitants.

Article VI, Section 15, Constitution of Missouri, 1945, makes the following provision:

"The general assembly shall provide by general laws, for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the powers of each class shall be defined by general laws so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. The general assembly shall also make provisions, by general law, whereby any city, town or village, existing by virtue of any special or local law, may elect to become subject to, and be governed by, the general laws relating to such corporations."

The Legislature is prohibited from passing local or special laws in the instances specified by Article III, Section 40, Constitution of Missouri, 1945. That section reads, in part:

"The general assembly shall not pass any local or special law:

* * * * *

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"(30) Where a general law can be made applicable, and whether a general law could have been made applicable is a judicial question to be judicially determined without regard to any legislative assertion on that subject; (32)."

Although the above provisions seem to require that all cities of a particular class be granted the same powers, the Supreme Court of Missouri has upheld the constitutionality of general laws giving to cities having certain characteristics, powers that are not given to all cities of the same class. The upholding or denial of the validity of such legislative acts is based upon the reasonableness of the classification involved. If there is reasonable basis for the classification, the law is valid. But if there is no reasonable basis, the law must fall. *City of Lebanon vs. Schneider*, 349 Mo. 712, 163 S.W. (2d) 588, and cases therein cited.

Senate Bill No. 112 being applicable only to third class, fourth class, and special charter cities in Clay and Jackson Counties, it must be determined whether there are circumstances justifying the grant of power to pension policemen and firemen in those cities, which circumstances are not present in other such cities throughout the State. We are not aware of any such justifying circumstances, and are, therefore, inclined to the view that the classification in Senate Bill No. 112 is an unconstitutional differentiation between cities of the same class. However, we cannot flatly declare the Bill to be unconstitutional, since at the Committee hearings it may develop that a factual situation exists, which is not apparent to us, that reasonably justifies the granting of the power only to the cities in Clay and Jackson Counties.

It should also be noted that Article VI, Section 25, Constitution of Missouri, 1945, permits authorization

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for pensioning only of salaried members of organized police and fire departments. It is suggested that it might be well to specifically limit the plan to such "salaried" members, even though the pension rate is based upon the salary of the member, except for the pension to the widows and children under Section 11.

CONCLUSION

In the premises, therefore, it is the opinion of this office that Senate Bill No. 112 of the 68th General Assembly which provides, in effect, that third class, fourth class and special charter cities of Clay and Jackson Counties having an organized police and fire department may provide pensions for their policemen and firemen, is unconstitutional, unless there is some difference between those cities in Clay and Jackson Counties and other cities of the same type in the State, reasonably justifying a differentiation in the powers granted to such cities.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

JOHN M. DALTON
Attorney General

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