NEW CONSTITUTION: Section 8, Article 6 construed.

May 3, 1945

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Honorable Forrest Mittendorf
Missouri State Representative
of the 63rd General Assembly
Jefferson City, Missouri

Dear Mr. Mittendorf:

We have your letter of April 26, 1945 wherein you request of this Department an opinion, which request reads as follows:

> "Article 6, Section 8 of the new Constitution providing for classification of counties provides 'all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all counties in the class to which such county belongs.'"
>
> "After the counties have been divided into the 4 classes, would a law applicable to counties within a given population range within a class or in 2 classes violate the above section of the Constitution?"

Section 8, Article 6 of the Missouri Constitution, adopted at the special election on February 27, 1945, reads as follows:

> "Provision shall be made by general laws for the organization and classification of counties except as provided in this Constitution. The number of classes shall not exceed four, and the organization and

> powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all counties in the class to which such county belongs."

At the outset, one must be mindful of the fact that to this date there has not been an expression by the Supreme Court of this State regarding any provision of the new Constitution. However, it is our view that our Supreme Court would follow the time-honored practice and would strictly construe the provisions of the Constitution defining powers. (State ex rel. Hussman, Refrigerator and Supply Co. vs. City of St. Louis, 5 S. W. (2d) 1080, 319 Mo., 497.) Also followed in the case of State ex rel. Rosebrough Monmument Co. vs. City of St. Louis, 11 S. W. (2d), page 1010. Further, where the meaning of the Constitution is plain and unequivocal and its intent is clear and unmistakable that the Courts have nothing to do with the policy of the rule established, but must accept the spirit of the rule as well as the letter and enforce it as if they believed in its wisdom. For a more accurate statement of the above rule, see the case of McGrew vs. Missouri Pacific Railway Co., 132 S. W. 1076, 230 Mo. 496; also 166 S. W. 1033, 258 Mo. 23.

Another time-honored rule, in the light of the American form of Government, is that the people of a State, in their sovereign capacity, have the power to define how much of the rights and liberties of the citizen they shall be required to sacrifice for the public good, subject to no limitations of law except the prohibition of the Federal Constitution. (Drekman vs. Stifel, 41 Mo., 184, 97 Am. Dec. 268.)

Therefore, a State Constitution is not a grant of power but is a limitation upon the power of the Legislature so that the Legislature may enact any law not expressly or inferentially prohibited by the Constitution of the State or the Nation. (State ex parte Roberts, 65 S. W. 726, 166 Mo. 207; State ex rel. Gaines vs. Canada, 113 S. W. (2d) 783, 342 Mo. 121.

Same case in, 131 S. W. (2d) 217; 344 Mo. 1238. With these rules in mind we shall now approach Section 8, Article 6 and endeavor to arrive at the intent and purpose of the people when they enacted this Section. It will first be noted that the Section provides as follows:

> "Provision shall be made by general laws for the organization and classification of counties except as provided in this Constitution. * * *"

We shall not endeavor to enumerate the special instances referred to be the exceptions. We do, however, point out that the term "general laws" and in this connection, we call attention to the case of State vs. Zangerle, 134 N. E. 686; 103 Ohio St. 566, where the term "general laws" was construed in the Ohio Constitution. (See Sec. 3, Article 18, thereof)

In the case of State ex rel. Attorney General vs. Lee, 99 S. W. (2d) 835, 837; 193 Ark. 270; the Court had this to say, l. c. 837:

> "* * * Laws are general and uniform, not because they operate on every person in the State, for they do not, but because they operate on every person who is brought within the relations and circumstances provided for. * * *"

We see from the reading of these cases that by the term, "general laws" is meant that the law so enacted must apply to and operate uniformly on all members of any class, therefore the next sentence which reads, in said Section 8, Article 6, as follows:

> "* * * The number of classes shall not exceed four and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. * * *"

To our minds this sentence is not ambiguous and merely means that the Legislature shall have the power to group all the counties of the State of Missouri into classes. By other provisions of Section 8, Article 6 of the Constitution the Legislature is limited and probibited from exceeding the number of classifications to a number greater than four. In other words, the Legislature now has the task of setting up four classifications of counties for the State of Missouri, all of which counties must be so grouped as to be in the four classifications. We do not find that the Constitution provides any method for the Legislature to arrive at the determination by statute. As to how these four classifications are determined, that is a problem for the Legislature. But when the four classifications are determined and the counties are grouped in one of the classifications then the Legislature must follow the limitations in the next sentence to wit:

> "* * * A law applicable to any county shall apply to all counties in the class to which such county belongs."

We think this sentence is not ambiguous and merely means that the people of each county shall share and share alike in the powers and restrictions that are shared by the citizens of each and every other county in that classification to which their county belongs.

Now, turning to the question presented in your opinion request, it is our view that any attempted legislation, which directly or indirectly must be considered to have created more than four classes or groups of counties would be unconstitutional and in violation of Section 8, Article 6, supra. We do not wish to be understood as meaning that any subsequent Legislature cannot change the classes as that term is used in Section 8, Article 6, supra. But it is our view that when a statute is passed if the effect of the statute, when considered with other existing statutes at the time, creates more than four classes, then that last statute would be in contravention of Section 8, Article 6.

## CONCLUSION

It is, therefore, the opinion of this Department that,

Section 8, Article 6 of the Constitution, approved on February 27, 1945, specifically limits the Legislature to the creation of, not to exceed four classes of counties, and that statutes, applying to only a part of the counties within any one class, would be unconstitutional.

Respectfully submitted,

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APPROVED:

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