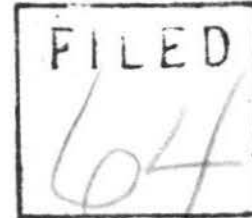


MUNICIPAL CORPORATIONS: Record necessary to incorporate cities of the fourth class.

June 8, 1937.

6-16



Mr. Morgan M. Moulder,
Prosecuting Attorney,
Camdenton, Missouri.

Dear Sir:

We wish to acknowledge your request for an opinion under date of June 4th, wherein you state as follows:

"Sections 6093, 6094, and 6095, Revised Statutes of the State of Missouri, 1929, provide and give authority to towns having a certain population to organize and to be incorporated as a city of the fourth class.

"The town of Camdenton, on the 8th day of November, 1934, did, or attempted to, organize as a city of the fourth class, as provided by the aforesaid sections of Article One, Chapter 38, Revised Statutes, 1929.

"I herewith attach to this letter and a request for your opinion the records, to-wit, the minutes and the ordinance book of the city or town of Camdenton, and I would appreciate your opinion as to whether or not all of the proceedings and requirements of the statutes of this state were complied with in the organization and incorporation of the town of Camdenton as a city of the fourth class. After your examination of the records of the city, we desire your opinion as to whether or not the city of Camdenton is legally organized and incorporated as a city of the fourth class."

Ordinance No. 30 of the town of Camdenton reads as follows:

"Ordinance No. 30

"Whereas, it is provided by the Revised Statutes of the State of Missouri 1929, that any town in this State existing by virtue of the present general Laws relating thereto, may elect to become a City of the class to which its population would entitle it under the provisions of this article, by passing an ordinance or proposition submitting the same to the legal voters of said town for their ratification. And whereas the Laws of the State of Missouri provide that all towns in this State containing five hundred and less than three thousand inhabitants which shall elect to become Cities of the fourth Class shall become Cities of the fourth class. And whereas the Board of Trustees of the town of Camdenton, State of Missouri, have requested the Governor of the State of Missouri to have a census taken, and whereas the Governor of the State of Missouri on the 29th day of August, 1934, did appoint a census supervisor and cause a census to be taken in the City of Camdenton, Missouri, which census revealed there to be 739 persons within the corporate limits of the town of Camdenton;

"Be it ordained, resolved and enacted by the Board of Trustees of the Town of Camdenton, Missouri, that it be and is hereby proposed to the inhabitants of the town of Camdenton, Missouri, to incorporate our City as a City of the fourth class, to be known as the City of Camdenton, as provided by Chapter thirty eight (38) of the Revised Statutes of Missouri 1929. That an election for that purpose be held on

the 4th day of December, 1934, and that the City Clerk be instructed to give proper notices of such election, and make all necessary preparations.

TED WILLARD

Ted Willard, Chairman of
Board of Trustees.

Attest. E. E. LEWIS

E. E. Lewis, Secretary
of Board of Trustees."

The Proclamation of the Chairman of the Board of Trustees reads as follows:

"Camdenton, Missouri
Dec. 5, 1934

'Proclamation'

"Declaring the Town of Camdenton duly organized and created, as a City of the Fourth class.

"Whereas, it is provided by the Revised Statutes of the State of Missouri 1929 that any city in this state existing by virtue of the present general law, may elect to become a city of the class to which its population would entitle it under the provisions of this Article by passing an Ordinance or proposition submitting the same to the legal voters of said city or town, etc., cities and towns of 600 and less than 5000 inhabitants shall be cities of the Fourth Class, etc.

"Therefore, be it resolved by the Board of Trustees of the inhabitants of the town of Camdenton, that it be and is hereby proposed to the inhabitants of the Town of Camdenton to incorporate our said town as a city of the Fourth Class, to be known as the City of Camdenton, as provided by Chapter 38 of Revised Statutes Missouri 1929.

"Whereas, The Board of Trustees of the town of Camdenton, on the _____ day of _____, 1934, passed and submitted to the legal voters of said Town a proposition to organize said town into a city of the Fourth Class under Article 8, Chapter 38, Revised Statutes of 1929 and gave due notice thereof, and,

"Whereas, said election was duly held therefor on the 4th day of December, 1934, and the vote on said proposition duly taken, returned and canvassed and that there was a majority of the vote cast in favor of the proposition.

"I, therefore, declare said proposition carried and ratified by a majority of Forty-seven votes cast at said election, and that said town of Camdenton, by virtue of said vote, is incorporated under the general law into a city of the Fourth Class from and after this date.

TED WILLARD,
Chairman, Board of Trustees.

Attest:

E. E. LEWIS, Clerk."

Section 6093, R. S. Mo. 1929, provides the population necessary in order that cities or towns may elect to become cities of the fourth class:

"All cities and towns in this state containing five hundred and less than three thousand inhabitants, and all towns existing under any special law, and having less than five hundred inhabitants, which shall elect to be cities of the fourth class, shall be cities of the fourth class."

Section 6095, R. S. Mo. 1929, provides how cities or towns may be incorporated in their respective classes, in part, as follows:

"Any city or town in this state, existing by virtue of the present general law, or by any local or special law, may elect to become a city of the class to which its population would entitle it under the provisions of this article, by passing an ordinance or proposition, and submitting the same to the legal voters of such city or town, at an election to be held for that purpose, not less than twenty nor more than thirty days after the passage of such ordinance or proposition; and if a majority of such voters voting at such election shall ratify such ordinance or proposition, the mayor or chief officer of such city or town shall issue his proclamation, declaring the result of such election, and thereafter such city or town shall, by virtue of such vote, be incorporated under the provisions of the general law providing for the government of the class to which such city belongs, which class shall be determined by the last census taken, whether state or national."

The town of Camdenon sought to organize as a city of the fourth class under the above statutory provisions (1) by determining that its population was five hundred and less than three thousand inhabitants, (2) by passing an ordinance on the 8th day of November, 1934, and submitting same to the legal voters of the town at an election held on the 4th day of December, 1934, for the purpose of determining whether it would elect to become a city of the fourth class, (3) by submitting the ordinance to the voters not less than twenty nor more than thirty days after the passage of such ordinance, and (4) by having the chief officer of the town of Camdenon issue his proclamation that a majority of the voters voting at such election had ratified the above ordinance.

No mention is made in the above records showing the time and place where the election was to be held on the proposition, and the question arises whether such amounts to a defect in the incorporation.

The statute makes no requirement that the ordinance shall show the time and place where the election is to be held, it merely provides that an election be held, which, as shown by the proclamation, was held.

43 Corpus Juris, Sec. 45, p. 96, in referring to the record that must be made in the incorporation or classification of municipalities, states:

"The record need not contain matters not required by the particular statute * * *."

In the case of State ex rel. v. Westport, 116 Mo. 582, 591, 22 S. W. 888, the incorporation of a city was challenged because the ordinance submitting the proposition to the people stated that such vote should be taken at the town hall, and did not provide that the people of each ward should vote in their respective wards on such proposition. The Court in holding that this was at most an irregularity, and did not make the election absolutely void, said:

"The first section of the ordinance now under consideration provides that the proposition to become a 'city of the fourth class' shall be submitted to the legal voters of the town of Westport at an election to be held for that purpose on the fourth day of June, 1881.

"In pursuance of this ordinance, an election was held at the town hall, and a majority of those voting voted in favor of the proposition, whereupon the mayor issued his proclamation, declaring Westport to be a city of the fourth class. At the time of the election there were four wards in the town of Westport and it is contended by counsel for relator that there were four separate election districts and that the law required each voter to vote in the ward in which he lived; and as there was but one place of voting designated by the ordinance, to-wit: the town hall, that therefore, the election as well as the ordinance was also void.

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"The mere fact of there being but one voting place, was at most an irregularity and did not make the election absolutely void. In the case of Davis v. State, 75 Tex. 424, where the evidence showed that the city of 'San Marcos' incorporated and divided into four wards; that but two election precincts had been established in the city by the commissioners, and that they were established without reference to the wards, and that they included parts of the surrounding county, it was held that when the place of voting had been fixed, and the election had been held, it ought not to be set aside because they have failed to make each ward of a city an election precinct, unless it be shown that the election was fraudulent. Bell v. Faulkner, 19 S. W. Rep. 480; Peard v. State, ex rel., 51 N.W. Rep. 828.

"There is no claim or pretense that there was any fraud or unfairness connected with the promulgation of the ordinance or in the election thereunder, but everything seems to have been conducted with the utmost good faith and fairness."

The ordinance in the instant case made provision for the holding of the election, and ordered that the City Clerk be instructed to give proper notices of such election and take all necessary precautions. The mere fact that the ordinance did not declare the exact form of notice, ballot, etc., could be at most an irregularity, and we are of the opinion that there being no claim or pretense that there was any fraud or unfairness connected with the promulgation of the ordinance, or in the election thereunder, the town of Camdenton is legally organized and incorporated as a city of the fourth class.

Respectfully submitted,

MAX WASSERMAN,
Assistant Attorney General.

APPROVED:

J. E. TAYLOR,
(Acting) Attorney General.

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