

MUNICIPAL CORPORATIONS: Cities of the third class may not expend money from the general revenue fund for the purpose of obtaining a "City Plan."

September 27, 1943

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Honorable Robert V. Niedner
Prosecuting Attorney
St. Charles County
St. Charles, Missouri

Dear Mr. Niedner:

Your letter of September 17th requesting an opinion from this Department has been received by the Attorney-General and has been assigned to me for consideration. This opinion request, omitting caption and signature, is as follows:

"I should like to have your opinion concerning the following matter.

"It has long been the practice in the City and County of St. Charles to permit the development of public facilities, i. e., roads, streets, bridges, schools, libraries, etc., to be a matter of almost haphazard selection. We have never had a long range plan for this type of development. It has come to our attention, however, that such cities as Kirkwood, Jefferson City, and others in this State and many cities in other states have acquired what is known as a city plan. We discovered that a city plan could be obtained by the City by employing Harlan Bartholomew and associates with whom our Missouri State Highway Department is very familiar to make a long range survey for the City. It was proposed that the City pay for the plan and that the general fund of the City be reimbursed to some extent by a contribution from the Chamber of Commerce and by the allocation by the library board, park board, board of public

works, and school board to the extent that these public boards would be benefited by having a long range plan in the development of the facilities which each board administers.

"The City of St. Charles is a third class City and there is no express authorization for the employment of a planning engineer of this kind. However, I feel that in view of the Statutes pertaining to zoning and the police powers of the City Council that an expenditure of this kind would be lawful. There does not seem to be much difference between purchasing a plan and hiring an architect for the designing of public buildings except that the plan is of a somewhat longer view point.

"Can a third class City in your opinion expend public funds for the employment of a professional municipal engineering firm to draw up a plan for the future development of public facilities, i. e., streets, schools, sewer systems, water mains, etc., for the City?"

On September 21, 1943, I received a further communication from you addressed to the Attorney-General, which, omitting caption and signature, is as follows:

"On September 17th I requested an opinion concerning the employment of a professional municipal engineering firm to prepare a city plan for the City of St. Charles, Missouri. After a discussion with Mr. Joseph B. Wentker, City Attorney, I should like to broaden my question a little. I mentioned to you in my letter that the general fund of the City would be reimbursed by the Chamber of Commerce, library board, park board, board of public works, and school board for a part of the

funds expended. The County Court would also share a portion of this cost. The matter would be handled in this way because these boards would have a direct benefit from such a plan's being available to them from time to time in the expansion of their facilities. We would therefore also like to know whether there is anything to prevent these boards from appropriating from funds received by them for taxes, or as in the case of the board of public works funds received in the nature of receipts for water service, for a City plan.

"I mentioned the zoning statutes in my letter to you on September 17th. If it is your opinion that the City may obtain and avail itself of a City plan, do you think it has power to do so independent of the zoning statutes, as an implied power of the City in furtherance of its express powers and duties in the matter of streets, sewer systems, building regulations etc., or do you think that a City plan could be obtained only pursuant to the machinery set up for instituting zoning?"

The question involved in this request is whether a city of the third class has the authority to pay a sum of money to an engineering firm for the purpose of preparing and drawing plans for the future growth of said city. There is probably no doubt that the Legislature of the State of Missouri has the power, if it so desires, to grant such authority to a city of the third class, allowing it to make such expenditure. Consequently, we have searched the statutes of the State of Missouri to ascertain whether such authority has ever been granted and we are unable to find any statute which expressly confers upon a city of the third class such authority.

The powers of a municipal corporation are grouped under three classes according to the case of Taylor v. Dimmitt, 78 S. . (2d) 841, 336 Mo. 30. The court said in that case (S. W., l. c. 843):

"* * * 'It is a general and undisputed proposition of law that a municipal .

corporation possesses and can exercise the following powers, and no others: (1) Those granted in express words; (2) those necessarily or fairly implied in, or incident to, the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation--not simply convenient, but indispensable. Any fair, reasonable doubt concerning the existence of power is resolved by the courts against the corporation, and the power is denied.' St. Louis v. Kaime, 180 Mo. loc. cit. 322, 79 S. W. 140, 143 (quoting Dillon, Municipal Corp. vol 1 (4th Ed.) p. 145); State v. Butler, 178 Mo. 272, 77 S. W. 560; St. Louis v. Dreisoerner, 243 Mo. 217, 147 S. W. 998, 41 L. R. A. (N. S.) 177; St. Louis v. King, 226 Mo. 334, 126 S. W. 495, 27 L. R. A. (N. S.) 608, 136 Am. St. Rep. 643; Maryville v. Farmers' Trust Co., 226 Mo. App. 642, 45 S. W. (2d) 103."

As has been stated above, a matter of this kind will not come under the first classification set out in the above case, since the power is not expressly granted by statute. Neither will it fall under the third classification, since it is not essential to the declared objects and purposes of the corporation and is not indispensable. As a result, if a city of the third class has the authority to expend sums of money on a matter of this kind, it must fall into the second classification of powers above, which are those necessarily or fairly implied in, or incident to, the powers expressly granted.

There are numerous powers granted to a city of the third class by the statutes of this State but we are unable to ascertain any power to which a planning campaign is incidental or to which we can attach an implication of necessity. It is, of course, common knowledge that a city of the third class, such as St. Charles, Missouri, has the authority to make public improvements such as the paving of streets, construction of sidewalks, establishment of a sewer system, and many other improvements which we feel it is unnecessary to mention. However, this type of improvements is essential to the declared

objects of the corporation itself. We feel that plans prepared for this type of improvement could be paid for by a city, since they are prepared for a particular enterprise and in all probability will be expressly followed in the construction of such improvement. The plans contemplated in the instant matter apparently are for the purpose of planning the future growth of the City of St. Charles, but are prepared merely as a matter of suggestion to persons or corporations who will at some indefinite future time cause improvements to be made in the city. It does not appear that the suggested plans will have any control whatever over the future construction in the city but will only be advisory in nature.

In your opinion request the statement is made that in view of the zoning powers and also the police powers given other cities of the third class that a procedure such as the one contemplated would be authorized. There, of course, can be no question that municipal corporations such as St. Charles have the power to enact zoning provisions. Since that authority is given to them by Sections 7412 to 7423, R. S. Mo. 1939, and if a plan for such zoning was prepared with the intention of same being adopted, then a different question would be presented. However, as stated above, the plans contemplated in this particular matter would only be used in an advisory capacity and would have no real force and effect.

As stated above, reference is also made in your request to the police powers of a city of the third class being broad enough to authorize the expenditure of money for city planning purposes. Apparently the only reason that a survey of this type is desired, is for aesthetic purposes. The law in this state seems to be that the police power of cities cannot be invoked for mere aesthetic reasons. In the case of City of St. Louis v. Dreiscoerner, 243 Mo. 217, 147 S. W. 998, the court said: (l. c. 223)

"* * * The police power is a necessary and wholesome faculty of municipal government, but it only extends to the regulation of employments prejudicial to the public safety, health, morals and good government of the citizenry, and it ends where those public interests are not beneficially served thereby." (Gunning Co. v. St. Louis, 235 Mo.

l. c. 200) It cannot sanction the confiscation of private property for aesthetic purposes."

Other cases which cite the above case and which hold the same, are Kansas City v. Liebi, 298 Mo., l. c. 617 and State ex rel. Penrose Investment Company v. McKelvey, 301, l. c. 20.

We might further call your attention to the fact that certain counties in the State of Missouri are expressly given the power to have planning commissions under the statutes of this State. Under the Laws of Missouri, 1941, at page 465 and continuing to page 480, we find where certain counties are authorized to set up a planning commission. We further find in the Laws of Missouri, 1941, at page 481 to page 489, where other counties are authorized to set up a planning commission. Since the Legislature has seen fit to enact provisions authorizing a county to form a planning commission, it would seem that the Legislature realized and was conscious of the fact that such power was not a power which could be implied from any other statutory provision. Reasoning therefrom, we feel that if the Legislature of the State intended that a city of the third class should have a planning commission or should have the authority to expend sums of money from its general revenue fund, or for that matter from any other fund, that the Legislature would have expressly so stated in the form of a provision passed by it.

In view of the decisions and statutes set out above it is our opinion that a power of the kind contemplated in your request cannot be one which is necessarily implied from or incident to those powers expressly granted to a city by the Legislature of the State of Missouri. As we have said above, apparently this plan is intended for aesthetic purposes alone and we do not feel that under the decisions a city of the third class has the authority to expend sums of money from the general revenue fund for the purposes of paying an engineering firm for the preparation of a city plan.

Since our opinion is as stated, it is unnecessary to consider the diversion of moneys from other funds for the purpose of paying it into the general revenue fund where such money

can then be expended for the purposes outlined in your request. If the city has no power to expend the money from the general revenue fund, then the other question would not be pertinent.

CONCLUSION

Therefore, it is the opinion of this Department that the City of St. Charles, Missouri, a city of the third class, is not empowered to expend public funds for the employment of a professional municipal engineering firm for the purpose of preparing a plan for the future development of public facilities, streets, schools, sewer systems, water mains et cetera, for the City of St. Charles, Missouri, unless the city reasonably contemplates in the future zoning the city, constructing new public facilities or improving the public facilities which are now in existence.

Respectfully submitted,

JOHN S. PHILLIPS
Assistant Attorney-General

APPROVED:

ROY McKITTRICK
Attorney-General

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