

CITIES. : Cities of the third class not subject to
: taxation on airport owned in another
: county. May reasonably extend limits
: to include adjacent territory. Reason-
: ableness largely question of fact.
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June 13, 1944

Honorable Curtis J. Quimby
Prosecuting Attorney
Cole County
Jefferson City, Missouri



Dear Mr. Quimby:

We are in receipt of your letter of June 8, 1944, requesting an opinion of this office, which is as follows:

"It has been requested by the City, Chamber of Commerce and others to obtain from you an opinion on the following questions, 'Can the County of Callaway levy a tax upon property in Callaway County owned and operated in Callaway County by the City of Jefferson, property being an Air Port'? 'Can the City of Jefferson extend its property across the River into Callaway County so as to include the Air Port and probably other property there'?"

"Of course, I regard part of this question as ridiculous, but I am not asked for my opinion, I am asked to obtain your opinion. Will you, therefore, give me the benefit of your research on the above?"

With regard to the first question in your letter, Sec. 6, of Art. X, of the Missouri Constitution provides:

"The property, real and personal, of the State counties, and other municipal corporations, and cemeteries, shall be exempt from taxation* * *."

Sec. 10937 R. S. Mo., 1939, provides:

"The following subjects are exempt from taxation: First, all persons belonging to the army of the United States; Second, lands and lots, public buildings and structures with their furniture and equipment, belonging to the United States; Third, lands and other property belonging to this state;

fourth, lands and other property belonging to any city, county or other municipal corporation in this state, including market houses, town halls, and other public structures, with their furniture and equipment and all public squares and lots kept open for health, use or ornament. * * *"

The land here was acquired by the city under specific legislative authorization. See Sec. 15122 R. S. Mo., 1939.

In Grand River Drainage v. Reid, 111 S. W. (2d) 151, where the court held a drainage district to be a municipal corporation within the meaning of the tax exemption provisions, the court at page 153 stated:

"So long as they proceed in conformity with the expressed or implied authority conferred, we perceive one reason why they may not successfully invoke the protection of Sec. 6, Art X, of our Constitution."

With regard to the second question in your letter, I refer you to Sec. 6866, R. S. Mo., 1939, which reads:

"The jurisdiction of any city which shall organize under the provisions of this article shall not in anywise be affected or changed in consequence thereof, but the limits, wards and boundaries of such city shall remain after such organization the same as they were previous; and all laws or parts of laws, or ordinances, not inconsistent with this article, which were in operation in such city prior to its organization under this article, or prior to the passage of this article, shall continue in force until repealed. The mayor and council of such city, with the consent of a majority of the legal voters of such city voting at an election thereof, shall have power to extend the limits of the city over territory adjacent thereto, and to diminish the limits of the city by excluding territory therefrom, and shall, in every case, have power, with the consent of the legal voters as aforesaid, to extend or diminish the city limits in such manner as in their judgment and discretion may redound to the benefit of the city." (R. S. 1929, Sec. 6720.)

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Thus we see that cities of the third class are given the right to extend the limits of the city "over territory adjacent thereto." The fact that the proposed territory was in another county, would be a factor in determining whether the territory would be considered as "adjacent" and whether the proposed extension is reasonable.

In *Bituminous Casualty Corporation v. Walsh and Wells*, 170 S. W. (2d), 117, the court stated:

"'Adjacent' is lexically defined as lying near, close, or contiguous, neighboring, or bordering on, as a field adjacent to a highway, but it is not a definite and absolute term and its exact meaning is determinable principally by the context in which it is used, and the facts of each particular case.* * *"

It has also been held that the word "adjacent" is not inconsistent with the idea of something intervening. *Yard v. Ocean Beach Ass'n*, 49 N. J. Eq. 306, and that "adjacent" means next to or near; neighboring; while "adjoining" means "touching or contiguous." *Wolfe v. Hurry*, 46 F. (2d) 515.

The ordinance of course, must be reasonable. What is reasonable, is to a great extent a matter of fact and whether the court would consider the proposed extension here reasonable, we could not predict.

To a certain extent the courts have laid down rules on which to base their decisions as to whether extension of city limits is reasonable.

It has been held that since it is within the power of authorities of cities of the third class to provide by ordinance for extension of city limits, a particular ordinance enacted pursuant to this power will be presumed reasonable and valid. *State ex inf. v. City*, 193 S.W.989. *Bingle v. City*, 68 S. W. (2d), 866.

In the latter case the court went into the rule for interpreting reasonableness to some extent and at page 867, states it in these terms:

"* * * Appellants and respondents agree that under the settled doctrine of Missouri, in cases of this character, the rule is that the city limits may reasonably and properly be extended so as to take in contiguous lands: (1) When they are platted and held for sale or use as town lots; (2) whether platted or not, if they are held to be put on the market and sold as town property when they reach a value corresponding to the views of the owner; (3) when they furnish the abode for a densely settled community, or represent the actual growth of the town beyond its legal boundary; (4) when they are needed for any proper town purpose, as for the extension of its streets, or sewer, gas, or water system, or to supply places for the abode of business of its residents, or for the extension of needed police regulation; and (5) when they are valuable by reason of their adaptability for prospective town uses, but the mere fact that their value is enhanced by reason of their nearness to the corporation would not give ground for the annexation, if it did not appear that such value was enhanced on account of their adaptability to town use. This rule provides further the following two negative tests, that is, that city limits shall not be extended to take in adjacent, contiguous lands; (1) When they are used only for purposes of agriculture or horticulture and are valuable on account of such use; (2) when they are vacant and do not derive special value from their adaptability for city uses. State ex inf. Major v. Kansas City, 233 Mo. 162, Loc. cit. 213, 214, 134 S. W. 1007, which has been followed in Stoltman v. City of Clayton, 205 Mo. App. 568, 226 S. W. 315; Prairie Pipe Line Co. v. City of Moscow Mills (Mo. App.) 300 S. W. 298; Winter v. City of Kirkwood (Mo. App.) 296 S. W. 232; Jones v. City of Clayton (Mo. App.) 7 S. W. (2d) 1022.

"It is apparent that under the rule above stated the facts of each case are the primary consideration, and if the facts and circumstances of the case show that the land sought to be annexed can be held to fall within any one of the five positive tests of the said rule,

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then the annexing ordinances may be upheld, provided that the facts found to exist do not bring the case within the prohibition of either of the two negative tests.* * *

CONCLUSION.

It is, therefore, the opinion of this office that a city is not subject to taxation on an airport owned by it in another county. It is further the opinion of this office that a city of the third class may extend its limits to include territory adjacent thereto, provided such extension is reasonable. What is reasonable, is to a large extent a question of fact.

Respectfully submitted

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APPROVED:

ROY McKITTRICK
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