June 27, 1949

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Honorable Forrest Smith
Governor of Missouri
Executive Office
Jefferson City, Missouri

Dear Governor Smith:

I am in receipt of your request for an official opinion which reads as follows:

> "Senate Bill No. 102, which has recently been passed by the General Assembly, is before me for consideration. The City of St. Louis has raised the question of the constitutionality of this bill.
>
> "I would appreciate it if you will please furnish me an opinion on the question of whether or not this bill is constitutional."

In the preparation of this opinion we have dealt entirely with the legal aspects of the bill, and we do not pass upon its wisdom or the practical effects thereof, because that is a matter which is left entirely to the Legislature and the Governor, and is not a proper function of the courts or this department.

Senate Bill No. 102 which has passed both Houses of the General Assembly provides as follows:

> "Section 1. No building, structure or erection on any real estate located within any city of more than 600,000 inhabitants in this state, which is used or intended to be used primarily for residential housing purposes and which has been or may hereafter be acquired by the state highway commission or by any such city for the purpose of locating, or constructing any state

> highway, shall be destroyed, removed, or otherwise rendered unfit for residential housing, nor shall any tenant or occupant of any such building or structure be evicted therefrom for the purpose of locating or constructing any such highway by the state highway commission or by any such city for a period of two years next after the effective date of this act.
>
> "Section 2. Actions, by injunctive process or otherwise, to enforce this act may be brought against the state highway commission, or against any city in any city where such real estate is located.
>
> "Section 3. This act is designed to prevent acute distress of great numbers of persons within cities of over 600,000 inhabitants, who are about to be forced out of their residences by reason of the carrying out of projects to locate state highways by the state highway commission and the City of St. Louis, within said City of St. Louis, and the General Assembly hereby declares that this act is necessary for the immediate preservation of the public peace, health and safety and an emergency exists within the meaning of the constitution. This act, therefore, shall be in full force and effect from and after its passage and approval."

A reading of the above bill discloses that its purpose is to delay for a two year period, the eviction of persons living in houses which are owned by the state or by a city, which houses have been acquired by the state or city as the part of a right-of-way for the construction of a state highway. The reason that the Legislature provided for such delay is that it is common knowledge that in large metropolitan areas there is a serious shortage of houses and for the state or one of its political subdivisions to evict tenants from houses owned by the state or the political subdivision would cause a severe hardship, not only upon the persons so affected, but upon the economic and general welfare of the metropolitan area. That a court may take judicial notice

of such condition has been settled in this state by the cases of Saxbury vs. Coons, 98 S.W. (2d) 662, and State ex rel. Short Line Railroad Company vs. Public Service Commission, 339 Mo. 641, 98 S.W. (2d) 699.

It is equally well-settled in this state that the Legislature under its police powers may pass laws for the social or political well being of the state, and that such power is elastic in its nature in order "to meet changing and shifting conditions which from time to time arise through increase of population and complex commercial and social relations of the people." Graff vs. Priest, 201 S.W. (2d) 945.

At the outset, we believe that it is necessary to call your attention to certain facts which will necessarily enter into the discussion of the constitutionality of Senate Bill No. 102. It is obvious that the bill, if approved, will apply for the next year only to the City of St. Louis. After the 1950 decennial census it is possible that it may apply to other cities of this state. Further, we are informed that on July 13, 1948, the State Highway Commission entered into an agreement with the City of St. Louis regarding the building of a state highway through the city. Under such agreement the city agrees to acquire the necessary right-of-way by purchase or condemnation in the name of the Commission and as its agent, and the Commission agrees to construct the project, at no cost to the city, from State and Federal funds and the city agrees to pay one-third of the right-of-way costs. The city further agrees to make the initial payment for the right-of-way and be reimbursed by the Commission for two-thirds of such costs. There are other provisions in the agreement but we believe that, insofar as this opinion is concerned, the above is sufficient to apprise you of the facts necessary for an understanding of the later discussion.

Further, there have been certain negotiations between the Missouri State Highway Commission and the Public Roads Administration of the Federal Works Agency in regard to the St. Louis project.

Under the provisions and requirements of the regulations of the Public Roads Administration of the Federal Works Agency, the State Highway Commission, in order to obtain Federal monies for use in constructing state highways, submitted a program of proposed projects to the Public Roads Administration. Included in said program was the St. Louis project. Said program was approved by the Public Roads

Administration. An individual project statement relating only to the St. Louis project was submitted by the State Highway Commission to the same Agency, which project statement was approved. In the approved project statement the State Highway Commission asked that they be reimbursed by the Federal Government for the Federal Government's share of the expenses incurred in:

1) Making the preliminary engineering survey and plans;
2) The acquisition of the right-of-way, and,
3) The construction of the highway.

Pursuant to this approved project statement, the State Highway Commission and the Public Roads Administration have entered into a project agreement by which the Federal Government agrees and contracts to pay to the State Highway Commission its share of the preliminary engineering survey and plans. At this time there have been no project agreements between the Public Roads Administration and the State Highway Commission that the Federal Government will reimburse the state for the expenses incurred under the second and third items listed above, that is, the acquisition of the right-of-way and the construction of the highway.

With these facts in mind we will take up the various Federal and State constitutional questions which are raised by Senate Bill No. 102. However, this opinion will not deal with the validity of the emergency clause becuase, while it is a constitutional question, still such clause is not an essential part of the bill, and does not go to its merits but only relates to the time it shall take effect. An emergency clause which is unconstitutional does not, in any way, affect the rest of the bill but is severable.

I.

No question as to the right of the State Highway Commission or a city of 600,000 inhabitants to condemn property is raised by Senate Bill No. 102.

We believe it is proper at the outset to point out that Senate Bill No. 102 does not, in any way, relate to or affect the right of the State Highway Commission or a city of 600,000 inhabitants to acquire property by purchase or by condemnation. A reading of the Act discloses that it is applicable only after the property has been acquired, either by purchase or condemnation. Therefore, we do not believe it is necessary to discuss in this opinion what rights, constitutional and statutory, the State Highway Commission or a city might have to acquire property by purchase or condemnation, and whether these rights may be impaired or abrogated by action of the General Assembly.

The Legislature has the power to limit the authority of the State Highway Commission to construct state highways.

The power of the Legislature to limit the authority of the State Highway Commission to construct and reconstruct state highways is derived from the Constitution of Missouri. Thus, Section 29, Article IV, in part, provides:

> "The department of highways shall be in charge of a highway commission. * * * It shall have authority over and power to locate, relocate, design and maintain all state highways; and authority to construct and reconstruct state highways, subject to limitations and conditions imposed by law as to the manner and means of exercising such authority; * * *"

In a recent opinion to Senator John W. Noble this department had occasion to construe the above quoted section of the Constitution. In that opinion we concluded that this constitutional provision "provides no limit, with regard to the Commission's exercise of its powers to locate, relocate, design and maintain highways." However, we further concluded in that opinion that "the authority of the Commission to construct and reconstruct state highways shall be subject to limitations imposed by law as to the manner and means of exercising such authority." It is, therefore, our thought that whereas certain authority of the Commission in the creation of state highways is free and unrestrained, certain other authority, i.e., to construct and reconstruct, is subject to legislative limitations.

It is our view of the matter that the provisions of Senate Bill No. 102 in prohibiting the destruction or removal of buildings used or to be used as dwellings for a period of two years would be a limitation imposed by the Legislature only upon the authority of the Commission to construct a state highway. The bill in no wise prevents the Commission from determining the location of a state highway, designing it architecturally and according to plans and specifications or from maintaining it after it is constructed.

The act of razing structures along the path and in the area that a highway is located, we believe, is merely one of the preliminary steps in the process of constructing it, the same as would be the removal of certain objects of nature such as large trees, boulders or the grading down of a hill. The effect of Senate Bill No. 102, directed at this particular element or phase of construction, we believe limits its performance as to manner or means by retarding or delaying it. The further effect of the bill could well be that the manner and means of construction of a highway would be changed in that other phases or steps in construction would be performed at an earlier or later time from what would be standard operating procedure were the bill not in existence.

Senate Bill No. 102 is not in violation of any constitutional provision prohibiting enactment of special or local laws.

The point has been raised that Senate Bill No. 102 is unconstitutional because it violates certain provisions of our State Constitution forbidding the enactment of local or special laws in that it is applicable to the City of St. Louis alone. The constitutional provisions that the act allegedly violates are Sections 40, 41, and 42 of Article III.

Sec. 40 forbids the general assembly to pass any local or special law "(15) vacating town plats, roads, streets or alleys; * * * (17) authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys."

Sec. 41 denies to the general assembly the right to indirectly enact a special law by the partial repeal of a general law.

Sec. 42 forbids the passage of a local or special law absent publication of a notice setting out the intention to apply therefor and the substance of the contemplated law. It further requires that such notice be published thirty days before the introduction of the law, and proof of publication must be filed before the act is passed and the notice must be recited in the act.

In reading Section 1 of the act, we observe that a classification is set up based on population, in that the provisions of the act are applicable to any city in the state of more than 600,000 inhabitants. According to the United States Decennial Census of 1940, the City of St. Louis is the only city within the state with more than 600,000 inhabitants, and would therefore be the only city to which the act would presently apply. It has been held by our Supreme Court that where a classification is based upon population, and the act is silent as to how the population is to be determined, then, the standard for determining the population is the United States Decennial Census. Reals v. Courson, 164 S.W. (2d) 306, 349 Mo. 1193. Thus, under the facts, the question confronting us is whether or not Senate Bill No. 102 is a local or special lawin violation of any constitutional prohibitions.

In Reals v. Courson, supra, the Supreme Court in stating the rule of classification of counties and other political subdivisions said, at S.W. l.c. 307-308:

> "In 1880 we adopted Pennsylvania's distinction between or definition of 'special' and 'general' laws. 'A statute which relates to persons or things as a class, is a general law, while a statute which relates to particular persons or things of a class is special' is the way the matter is roughly and broadly put and that suffices for normal purposes. * * * Under this definition it is permissible to classify counties or other political subdivisions according to population, provided the legislation is so drawn that other counties or subdivisions may come within the terms of the law or classification in the future. And this is so even though the act may apply to one county, city or other political subdivision only at the time of its enactment. Hull v. Baumann, 345 Mo. 159, 131 S.W. 2d 721; Roberts v. Benson, 346 Mo. 676, 142 S.W. 2d 1058; Thomas v. Buchanan County, 330 Mo. 627, 51 S.W. 2d 95; Davis v. Jasper County, 318 Mo. 248, 300 S.W. 493. * * *."

Again, in the later case of State ex rel. Fire District of Lemay v. Smith, 184 S.W. (2d) 593, 353 Mo. 807, the court said, at S.W., l. c. 595:

> "St. Louis County is the only county now within the population bracket stated in the act. Such fact alone does not make the act a special law for the reason the act will also apply to other counties which will attain the same population in the future. Where an act is potentially applicable to other counties which may come into the same class it is not a local law. * * *"

The duration of the act in question is for two years. However, within this period of time, the act is potentially applicable to other cities, such as Kansas City, which may possibly attain the necessary population as may be determined under the United States Decennial Census of 1950, which will be taken before the act expires.

Senate Bill No. 102 was undoubtedly enacted to cope with a condition prevailing in congested areas falling within the population bracket. Because there may be other congested areas

in the state to which the same act might have been applied, does not stamp the classification in the act as unreasonable or arbitrary. Our Supreme Court has held that population alone is a reasonable basis for classification, and it is only necessary that the act apply to all places of the same population designated in the law. Thus, in the Fire District of Lemay case, supra, the Supreme Court in overruling the discussions in earlier cases leading to opposite conclusions declared at S.W., l.c. 595:

> "Respondent argues the Legislature does not give the right of organizing fire districts to all the congested areas that need it, but only to those areas in counties covered by the act and for that reason the act is arbitrary, and contrary to the rule expressed in State ex rel. Hollaway v. Knight, 323 Mo. 1241, 21 S.W. 2d 767 and quoted in Hull v. Baumann, supra (345 Mo. 159, 131 S.W. 2d 724), as follows: 'But a law general so far as population is concerned may be a special law if the classification made therein is unnatural, unreasonable, and arbitrary so that the act does not apply to all persons, objects, or places similarly situated.' This statement is too broad and is not supported by the decisions. Where, as here, population is a reasonable basis for classification it is only necessary that the act apply to all places of the same population designated in the law. The fact there may be congested areas in counties having a different population does not make the act a special law. The discussions leading to opposite conclusions in State ex inf. Gentry v. Armstrong, 315 Mo. 298, 286 S.W. 705; Rose v. Smiley, Mo. Sup., 296 S.W. 815; and State ex rel. Gentry v. Curtis, 319 Mo. 316, 4 S.W. 2d 467, are not in harmony with the prevailing rule. * * *
>
> "The act we are considering applies generally to all congested areas similarly situated, that is--situated in counties of the same population bracket. Because there are other congested areas to which the same act might have been applied does not stamp the classification as unreasonable. * * * ".

In connection with this point, we consider it worthwhile to present the view adopted by the United States Supreme Court in

the case of Williams v. Baltimore, 289 U.S. 36, 77 L. Ed. 1015, wherein the court was ruling on the constitutionality of an act of the State of Maryland, specifically exempting the property from taxation of a particular railroad named in the act which was about to cease operation due to lack of funds. The act was attacked on the ground that it was a special law and in violation of Article III, Section 33 of the Maryland Constitution, which provided: "The General Assembly shall pass no special law for any case for which provision has been made by an existing general law." This constitutional provision is similar to that of Section 41, Article III, of our Missouri Constitution. In upholding the act, the court, speaking through Justice Cardozo, said at L. Ed., l.c. 1023-1024:

> "The statute is not repugnant to Article 3, Section 33, of the Maryland Constitution, wherein it is said that 'the General Assembly shall pass no special law for any case for which provision has been made by an existing general law.'
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> "* * *There has been need, now and again, to develop close distinction. Our endeavor in what follows is to extract the essence of the decisions and to give effect to it as law.
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> "Time with its tides brings new conditions which must be cared for by new laws. Sometimes the new conditions affect the members of a class. If so, the correcting statute must apply to all alike. Sometimes the new conditions affect one only or a few. If so the correcting statute may be as narrow as the mischief. The Constitution does not prohibit special laws inflexibly and always. It permits them when there are special evils with which existing general laws are incompetent to cope. The special public purpose will then sustain the special form. Baltimore v. United R. & Electric Co. 126 Md. 39, 94 At. 378, supra. The problem in last analysis is one of legislative policy, with a wide margin of discretion conceded to the lawmakers.* * *"

Consequently, in light of the foregoing authorities, we are persuaded to the view that Senate Bill No. 102 is not a local or special law in violation of any constitutional provisions prohibiting this type of legislation.

Senate Bill No. 102 is not violative of Article I, Section 10 of the Constitution of the United States or Article I, Section 13 of the Constitution of Missouri, 1945, as an impairment of the obligation of contracts between municipalities and the State.

In the event that Senate Bill No. 102 becomes part of a statutory law of Missouri, the question arises as to its effect upon contractual obligations of cities covered by the act. At the present time there is a contract between the City of St. Louis (a city of more than 600,000 inhabitants) and the State Highway Commission, providing for the acquisition of a right-of-way, construction of a highway, maintenance and regulation of traffic thereon, in the corporate limits of the City of St. Louis. Senate Bill No. 102 would stay certain actions contemplated under this contract for a period of two years next after the effective date thereof.

In connection with this we must determine whether or not this would be a violation of Article I, Section 10 of the Constitution of the United States, which is, in part, as follows:

> "No State shall * * * *pass any Law impairing the Obligation of Contracts * * * *"

The leading case concerning the right of a state to abrogate a contract of one of its political subdivisions is City of Trenton v. New Jersey, 262 U.S. 182, 67 L. Ed. 937, 43 S. Ct. 534, 29 A. L.R. 1471. In the course of its opinion the court said, l.c. 941:

> "As said by this court, speaking through Mr. Justice Moody, in Hunter v. Pittsburg, 207 U.S. 161, 178, 179, 52 L. Ed. 151, 159, 160, 28 Sup. Ct. Rep. 40;
>
> "'The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the state. Neither their charters nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the state within the meaning of The Federal Constitution. The state, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand

or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter, and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects, the state is supreme; and its legislative body, conforming its action to the state Constitution may do as it will, unrestrained by any provision of the Constitution of the United States . . . . The power is in the state, and those who legislate for the state are alone responsible for any unjust or oppressive exercise of it.'

* * * * * * * * *

"In the absence of state constitutional provisions safeguarding it to them, municipalities have no inherent right of self-government which is beyond the legislative control of the state. A municipality is merely a department of the state, and the state may withhold, grant, or withdraw powers and privileges, as it sees fit. However, great or small its sphere of action, it remains the creature of the state, exercising and holding powers and privileges subject to the sovereign will. See Barnes v. District of Columbia, 91 U. S. 540, 544, 545, 23 L. ed. 440, 441.

* * * * * * * * *

"The power of the state, unrestrained by the contract clause or the 14th Amendment, over the rights and property of cities held and used for 'governmental purposes,' cannot be questioned. In Hunter v. Pittsburg, supra, 179, reference is made to the distinction between property owned by municipal corporations in their public and governmental capacity and that owned by them in their private or proprietary capacity, and decisions of this court which mention that distinction are referred to. In none of these cases was any power, right,

> or property of a city or other political subdivision held to be protected by the contract clause or the 14th Amendment. This court has never held that these subdivisions may invoke such restraints upon the power of the state.
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> "In East Hartford v. Hartford Bridge Co. 10 How. 511, 533, 534-536, 13 L. ed. 518, 527-529, it appeared that, for many years, a franchise to operate a ferry over the Connecticut river belonged to the town of Hartford; that, upon the incorporation of East Hartford, the legislature granted to it one half of the ferry during the pleasure of the general assembly, and that subsequently, after the building of a bridge across the river, the legislature discontinued the ferry. It was held that this was not inconsistent with the contract clause of the Federal Constitution. The reasons given in the opinion (pp. 533, 534) support the contention of the state here made, that the city cannot possess a contract with the state which may not be changed or regulated by state legislation." (Underscoring ours.)

In a previous case, City of Pawhuska v. Pawhuska Oil and Gas Company, 250 U.S. 394, 63 L. Ed. 1054, 39 S. Ct. 526, the Supreme Court had declared the principle of law that the action of a state in abrogating a contract of a municipality does not violate Article I, Section 10 of the Constitution of the United States.

The following later cases were dismissed in the Supreme Court of the United States for the reason that no Federal question was involved: City of Tulsa v. Oklahoma Natural Gas Company, 4 Fed. (2d) 399, App. Dis. 269 U.S. 527, 70 L. Ed. 395, 46 S. Ct. 17; Board of County Commissioners of Barber County, Kansas, v. Carl J. Peterson, et al., 113 Kan. 180, 213 P. 1054, App. Dis. 266 U.S. 591, 69 L. Ed. 457, 45 S. Ct. 194; Twin Falls County, Idaho, v. Marie Henderson, 59 Ida. 97, 80 P. (2d) 801, App. Dis. 305 U.S. 569, 83 L. Ed. 358, 59 S. Ct. 149; Williams v. Baltimore, 289 U.S. 36, 77 L. Ed. 1015, 53 S. Ct. 431. In all of the above cases the court cited, among others, the cases of City of Trenton and City of Pawhuska, supra, as grounds for its refusal to take jurisdiction of the case.

On the same day that the decision of the court was announced

in the City of Trenton case, supra, the Supreme Court of the United States also decided the case of City of Newark v. State of New York, 262 U.S. 192, 67 L. Ed. 943, in which the court said, l.c. 946:

> "* * *The city cannot invoke the protection of the 14th Amendment against the state. * * *"

See also Neunschwander v. U. Suburban Sanitary Commission, et al., 189 Md. 74, 48 Atl. (2d) 593; Town of Brighton v. Town of Charleston, 114 Vt. 322, 44 Atl. (2d) 632; Brooklyn and Richmond Ferry Company v. United States, 167 Fed. (2d) 330, Annotations in 90 A.L.R. 688 and 116 A.L.R. 1037.

By the decisions in the Trenton and Pawhuska cases, supra, the Supreme Court of the United States has well established the legality of a state's action in abrogating a contract entered into by a municipality which is a political subdivision of the state.

The section of the Missouri Constitution prohibiting the enactment of any law impairing the obligation of contracts contains substantially similar language to that in the United States Constitution which has been discussed supra.

Article I, Section 13 of the Constitution of Missouri, 1945, reads as follows:

> "That no ex post facto law, nor law impairing the obligation of contracts, or retrospective in its operation, or making any irrevocable grant of special privileges or immunities, can be enacted."

The same reasoning which was applied in the cases under the Federal Constitution is also applicable in this discussion of the possibility of conflict with the Missouri Constitution. In the case of City of St. Louis v. Public Service Commission, et al., 276 Mo. 509, 207 S.W. 799, there was in existence a contract between United Railways Company of St. Louis and that City providing for certain fares to be collected from passengers on the street railways' lines. Thereafter, the United Railways Company filed with the Public Service Commission a petition asking that it be allowed to charge a reasonable compensation for the service it rendered the public in operating its street railways in the City of St. Louis. The city interposed as a defense Section 20 of

Article XII of the Constitution of 1875, which read as follows:

> "'No law shall be passed by the General Assembly granting the right to construct and operate a street railroad within any city, town, village, or on any public highway, without first acquiring the consent of the local authorities having control of the street or highway proposed to be occupied by such street railroad; and the franchise so granted shall not be transferred without similar assent first obtained.'"

In its opinion the court held that until the Legislature acted the city could impose, among others, limitations concerning fares to be charged, but it held further that Section 20 of Article XII did not prohibit action by the Legislature under its police power in the regulation of rates. At l. c. 526 the court said:

> "If I am correct in the foregoing conclusion, then the Legislature had the undoubted authority under thepolice power of the State to increase or decrease those fares as it deems proper or to authorize the Public Service Commission to do the same. The following cases so hold: State ex rel. v. Public Service Commission, 275 Mo. 201; City of Fulton v. Public Service Commission, 275 Mo. 67; Public Utilities Commission v. Railroad, 275 Ill. 555, 570; Chicago v. O'Connell, 278 Ill. 591; Atlantic Coast Electric Ry. Co. v. Commission, 104 Atl. 218; Collingswood Sewerage Co. v. Collingswood, 102 Atl. 901; Salt Lake v. Light & Traction Co., 173 Pac. (Utah) 556.
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> "And this is true whether the franchise ordinance mentioned is considered as a contract or a regulation enactment; it having been enacted and agreed to subject to the police power of the State, it must give way upon the exercise of that power by the Legislature or by its duly authorized agent, the Public Service Commission; and it having acted the ordinance or contract, as

> you may deem it, must give way to the extent hereinbefore stated. (State ex rel. v. Public Service Commission, 275 Mo. 201; City of Fulton v. Public Service Commission, 275 Mo. 67.)"

In the case of Southwest Missouri R. Co. v. Public Service Commission, 219 S.W. 380, 281 Mo. 52, the court discussed the ruling in the case above, and at l.c. 381 said:

> " * * * It was also held that section 20 of Article 12 of the Constitution, to wit: * * * did not, in terms nor by necessary intendment, devolve upon the municipalities therein mentioned any part of the unrestricted power of the Legislature to deal with all matters pertaining to the police power of the state where not constitutionally prohibited from so doing.
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> "In the exercise of this great lawmaking function, the state is not obstructed by a contract between one of its agencies (cities, towns, or villages) and other persons, for the reason that the state cannot alienate any of its sovereign powers which are necessary to the public welfare, or essential to the protection of the health, morals, and property of its citizens. * * *"

The relationship of municipalities to the state was discussed at length in the case of Harris v. Bond Co., 244 Mo. 664, wherein the court said, l. c. 688:

> "It is the consensus of opinion in this country that the Legislature in the creation of municipal and public corporations of every description is absolute and unlimited, in the absence of some specific State or Federal constitutional provision restricting such powers.
>
> "The Legislature is vested with the whole power of the State in the absence of some such constitutional limitation; and may establish any public or municipal corporation it deems necessary or expedient in the public interest.
>
> "It may also confer upon such corporations such public power and authority as it may deem wise and best. Moreover, it may not

only create such public corporations, but it may also change, divide and abolish them at pleasure.

"Judge Dillon, in discussing this subject said: 'Subject to the constitutional limitations presently to be noticed, the power of the Legislature over such corporations is supreme and transcendent; it may, where there is no constitutional inhibition, erect, change, divide and even abolish them at pleasure, as it deems the public good to require.' (1 Dillon, on Municipal Corporations (5 Ed.), Sec. 92, p. 142.) 'Parliament may create new corporations, or abolish or alter charters, or impose new ones, at its will and without the consent of the inhabitants. And so may the State Legislatures in this country, if there be no constitutional restriction upon the power.' (1 Dillon, on Municipal Corporations (5 Ed.), Sec. 108, p. 181.)

"'A municipal corporation is, so far as its purely municipal relations are concerned, simply an agency of the State for conducting the affairs of government, and as such it is subject to the control of the Legislature. That body may place one part of the State under one municipal organization and another part of the State under another organization of an entirely different character.' (Williams v. Eggleston, 170 U.S. 310, per Mr. Justice Brewer.)

"'These corporations are bodies politic; created by laws of the State for the purpose of administering the affairs of the incorporated territory. They exercise powers of government, which are delegated to them by the Legislature, and they are subjected to certain duties. They are the auxiliaries, or the convenient instrumentalities, of the general government of the State for the purpose of municipal rule . . . . The whole interests are the exclusive domain of the government itself and the power of the Legislature over them is supreme and transcendent; except as restricted by the Constitution of the State. Their charters being granted for the better government of the particular districts,

> the right to insert such provisions as seem to best subserve public interests would seem, from the very nature of such institutions, to be inherent.' (MacMullen v. Middletown, 187 N. Y. 42, per Gray, J.)"

In the early case of The State ex rel. v. St. L., K. C. & N. Ry. Co., 9 Mo. App. 532, the court had for its consideration a statute annulling a tax assessment by a city and vesting the power to make the assessment for the year in question to another body. In its opinion the court said, l.c. 537:

> "* * * 'The creation of municipal corporations,' says Mr. Justice Cooley, 'and the conferring upon them of certain powers and subjecting them to corresponding duties, does not deprive the legislature of the State of that general control over their citizens which was before possessed. It still has authority to amend their charters, enlarge or diminish their boundaries, consolidate two or more into one, overrule their legislative action whenever it is deemed unwise, impolitic, or unjust, and even abolish them altogether, in the legislative discretion.' Cooley's Const. Lim. 192, citing many cases. See St. Louis v. Allen, 13 Mo. 400, 412; St. Louis v. Russell, 9 Mo. 507. 'The powers conferred on municipalities,' says Wagner, J., 'are subordinate to the powers of the Legislature over the same subject, and the latter will never be presumed to have abdicated their right to exercise these powers unless it is plainly so stated, or there is a necessary inconsistency between the two enactments.' The State v. Harper, 58 Mo. 531. 'The city,' said the same learned judge in another case, 'can only raise money and apply it to a particular purpose by virtue of a delegated authority, and the same authority that grants the power may alter the law and divert it to a different object.' St. Louis v. Shields, 52 Mo. 354. * * *
>
> "It will be seen from the second section of the act that it is in express terms retrospective. * * *

> "Nor is there force in the plaintiff's position that this statute, if held to be retrospective, is in conflict with sect. 15 of the Bill of Rights, which prohibits the Legislature from passing any law retrospective in its operation. Provisions of this kind exist, it is believed, in the constitutions of all the States, and they are generally held to extend only to the prohibiting of legislation of a retrospective character which disturbs rights of a private nature. If a controlling authority on this point is needed, it will be found in the case of The State ex rel. v. County Court, 34 Mo. 546, 571."

In the case of State v. Wellston Sewer Dist., 58 S.W. (2d) 988, there was a proceeding in mandamus to compel the respondent Board of Supervisors of the Wellston Sewer District of St. Louis County to proceed with the organization thereof in accordance with the provisions of a statute enacted in the year 1927. The act was repealed in 1931. During the intervening four years certain steps had been taken toward the organization of the district, but with the repeal of law under which it was created the Board of Supervisors refused to go further. The relators, who were property owners, contended that the organization had progressed to a point such as gave them a vested right to have the sewer project carried out and that right was violated by the repealing statute. One of the objections of relators' to the constitutionality of the repealing act was that they claimed to have a contract right requiring the execution of the sewer plan which the repealing act impaired in violation of Section 15 of Article II of the State Constitution. In its opinion the court said, l.c. 992:

> "The state has the power to enforce reasonable police regulations measurably affecting the liberties of people not alone with respect to their personal conduct and rights, but with respect to the use and enjoyment of their property as well--and this without the allowance of compensation for such restrictions. As against these regulations the people have no vested rights, no constitutional immunity by contract or otherwise. Thus it was held in State ex rel. Cadillac Co. v. Christopher, 317 Mo. 1179, 298 S.W. 720, that the zoning

> law of the city of St. Louis was constitutional though landowners were left uncompensated. Bellerive Inv. Co. v. Kansas City, 321 Mo. 969, 13 S.W. (2d) 628, 634, ruled an ordinance forbidding the keeping of more than three automobiles in any building below quarters used for living or sleeping purposes did not deprive the property owner of 'any right or privilege guaranteed by the Constitution, state or federal.' And in Kingshighway Presbyterian Church v. Sun Realty Co., 324 Mo. 510, 24 S.W. (2d) 108, 110, involving a St. Louis city ordinance which prohibited the location of a gasoline filling station within 250 feet of a church, this court said 'every citizen holds his property subject to the valid exercise of the police power,' and on that theory declared a building permit issued before the ordinance went into effect gave the defendant no vested right to build the station, although he had contracted for the erection thereof, purchased material, and commenced work. The rule has been expressly applied to contract rights. * * *"

In its discussion of the Wellston Sewer District case, supra, the Supreme Court of Missouri cited as one authority for its holding constitutional the repealing act referred to above the language of the Supreme Court of the United States in Hunter v. City of Pittsburg, 207 U. S. 161, 178, 179, 28 S. Ct. 40, 46, 52 L. Ed. 151, 159. The greater part of that quote is contained in this opinion in the discussion of the City of Trenton case in connection with the contract clause of the Constitution of the United States.

Therefore, under the authority of the above cases, we believe the enactment into law of Senate Bill No. 102 is not violative of Article I, Section 10 of the Constitution of the United States or Article I, Section 13 of the Constitution of Missouri, 1945, as an impairment of the obligation of contracts between municipalities and the State.

Senate Bill No. 102 is not an impairment of the obligation of contracts between the Federal Government and the State.

The question next presents itself as to whether Senate Bill No. 102 violates the provisions of the Federal and State Constitutions relating to the impairment of the obligation of contracts insofar as any contracts between the Federal Government and the State are concerned.

It is true that a contract or agreement entered into between the United States and a State is a contract within the meaning of the constitutional provisions so that a state law may not impair the obligation thereof. McGhee v. Mathis, 18 L. Ed. 314, 4 Wall. 143; State ex rel. Boynton v. Kansas State Highway Commission (Kans.), 32 Pac. (2d) 493; Johnson v. McDonald (Colo.), 49 Pac. (2d) 1017.

As pointed out in the statement of facts in the first part of this opinion, there has been no agreement or contract signed or executed by the Public Roads Administration and the State Highway Commission insofar as acquisition of the right-of-way and the construction of the highway are concerned. It is true that programs of proposed projects and project statements have been approved insofar as to these two matters are concerned. However, Section 1.9 of the Regulations of the Public Roads Administration of the Federal Works Agency provides, in part, as follows:

> " * * * A project agreement between the State highway department and the Commissioner shall be executed for each project on a form furnished by the Commissioner. No payment on any project shall be made by the United States unless and until such agreement has been executed, or nor on account of costs incurred prior to authorization by the authorized representative of the Commissioner."

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The Federal-Aid Highway Act of 1944 (58 Stat. 838) provides, in part, as follows:

> " * * * As soon as the funds for each of the post-war fiscal years have been apportioned, the Commissioner of Public Roads is authorized to enter into agreements with the State highway departments for the making of surveys and plans, the acquisition of rights-of-way, and the post-war construction of projects. His approval of any such agreement shall be a contractual obligation of the Federal Government for the payment of its pro rata share of the cost of construction: * * *"

Under the above regulation and statute there is no contractual obligation between the parties nor may any monies be paid by the Federal Government until such a project agreement has been entered into and signed. As pointed out in the first part of this opinion, Senate Bill No. 102 relates only to property that has been acquired by the state or city, and only delays the construction of such highway, and does not, in any way, affect the condemnation or other acquisition of such property. Therefore, because there is no contract now in existence between the Federal Government and the State relating to the actual construction of the highway, there can be no obligation of contract impaired by Senate Bill No. 102.

The right of a state to enact laws under the police power in emergencies has always been upheld by the courts of the United States and the states.

The courts of the United States and of the states have invariably held as being not violative of constitutional provisions laws enacted under the police powers of a state when emergency conditions exist.

The United States Supreme Court, in the case of Home Bldg. & L. Assn. vs. Blaisdell, 290 U.S. 398, 78 L. ed. 413, 54 S. Ct. 231, 88 A.L.R. 1481, upheld a moratory statute enacted by the State of Minnesota during the chaotic economic period of the 1930's, which statute, during a limited period of time, provided relief from mortgage foreclosures, postponed execution sales of real estate and extended periods of redemption. The court said, l.c. 434:

> "Not only is the constitutional provision qualified by the measure of control which the State retains over remedial processes, but the State also continues to possess authority to safeguard the vital interests of its people. It does not matter that legislation appropriate to that end 'has the result of modifying or abrogating contracts already in effect.' Stephenson v. Binford, 287 U.S. 251, 276 . Not only are existing laws read into contracts in order to fix obligations as between the parties, but the reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order. The policy of protecting contracts against impairment presupposes the maintenance of a government by virtue of which contractual relations are worth while,--a government which retains adequate authority to secure the peace and good order of society. This principle of harmonizing the constitutional prohibition with the necessary residuum of state power has had progressive recognition in the decisions of this Court."

In the case of People vs. La Fetra, 130 N.E. 601, 230 N.Y. 429, the Court of Appeals of New York upheld as constitutional the acts of the Legislature of New York, applying to the City of New York, known as the "September housing laws,"

which laws prohibited eviction of tenants in Greater New York for a limited period when fair rent was paid. The court said, l.c. 604:

> "Whether or not a public emergency existed was a question of fact, debated and debatable which addressed itself primarily to the Legislature. That it existed, promised not to be presently self-curative, and called for action, appeared from public documents and from common knowledge and observation. If the lawmaking power on such evidence has determined the existence of the emergency and has, in the main, dealt with it in a manner permitted by the constitutional limitations upon legislative power, so far as the same affect the class of landlords now challenging the statutes, the legislation should be upheld. How it may operate on other classes or individuals not before the court is not our present concern. The relator comes indisputably within the main purpose of the statutes, but it has no standing to raise questions which do not directly affect it. Arizona Employers' Liability Cases, 250 U.S. 400, 409, 39 Sup. Ct. 553, 63 L. Ed. 1058, 6 A.L.R. 1537. * * * * "

The court further said, l.c. 608:

> "Laws directly nullifying some essential part of private contracts are rare, and are not lightly to be upheld by hasty and sweeping generalizations on the common good (Barnitz v. Beverly, supra; Bradley v. Lightcap, 195 U.S. 1, 24 Sup. Ct. 748, 49 L. Ed. 65); but no decision upholds the extreme view that the obligation of private contracts may never be directly impaired in the exercise of the legislative power. No vital distinction may be drawn between the exercise in times of emergency of the police power upon the property right and upon the contract obligations for the promotion of the public weal. * * * "

The same court said in the case of Guttag vs. Shatzkin, 130 N.E. 929, 230 N.Y. 647, at l.c. 930:

> "While the states are subject to the contract clause of section 10, article 1, and section

> 1, article 14, of the United States Constitution, the police power of the states may affect contracts and modify property rights without violation of these provinces. Conceding the health, safety, and morals of its citizens to be involved, and the circumstances to justify a proper interference by the state, neither the contract nor due process of law clause stand in the way. Union Dry Goods Co. v. Georgia Public Service Corporation, 248 U.S. 372, 39 Sup. Ct. 117, 63 L. Ed. 309, 9 A.L.R. 1420. These sections of our federal Constitution and the police power of the state harmonize and never conflict. The only question here is one of fact, not one of law: Do the facts call into existence the power reserved to the states to legislate for the safety and health of the people? Within its sphere the police power of the states is not unlike the war power of the nation. Both are rules of necessity, impliedly or expressly existing in every form of government; the one to preserve the health and morals of a community; the other to preserve sovereignty."
>
> (Emphasis ours.)

The United States Supreme Court upheld the New York housing laws in the case of Levy Leasing Co. vs. Siegel, 258 U.S. 242, 42 S. Ct. 289, 66 L. ed. 595, the court said, l.c. 245:

> "The warrant for this legislative resort to the police power was the conviction on the part of the state legislators that there existed in the larger cities of the State a social emergency, caused by an insufficient supply of dwelling houses and apartments, so grave that it constituted a serious menace to the health, morality, comfort and even to the peace of a large part of the people of the State. That such an emergency, if it really existed, would sustain a resort, otherwise valid, to the police power for the purpose of dealing with it cannot be doubted, for, unless relieved, the public welfare would suffer in respects which constitute the primary and undisputed, as well as the most usual, basis and justification for exercise of that power.

* * * * * * * * *

> "If this court were disposed, as it is not, to ignore the notorious fact that a grave social problem has arisen from the insufficient supply of dwellings in all large cities of this and other countries, resulting from the cessation of building activities incident to the war, nevertheless, these reports and the very great respect which courts must give to the legislative declaration that an emergency existed would be amply sufficient to sustain an appropriate resort to the police power for the purpose of dealing with it in the public interest."

In Evanston vs. Wazau, 364 Ill. 198, 4 N.E. (2d) 78, the Court said:

> "* * * In the exercise of this power (police power) the Legislature may enact laws regulating, restraining, or prohibiting anything harmful to the welfare of the people, even though such regulation, restraint, or prohibition interferes with the liberty or property of an individual. Neither the Fourteenth Amendment to the Federal Constitution nor any provision of the Constitution of this state was designed to interfere with the police power to enact and enforce laws for the protection of the health, peace, safety, morals, or general welfare of the people. Fenske Bros. v. Upholsterers' Union, 358 Ill. 239, 193 N.E. 112, 97 A.L.R. 1318; People v. Anderson, 355 Ill. 289, 189 N. E. 338. * * * ."
>
> (Words in parenthesis ours.)

CONCLUSION

In view of the above authorities it is the opinion of this department that Senate Bill No. 102 is not violative of any provisions of the Constitution of the State of Missouri or the Constitution of the United States.

Respectfully submitted,

APPROVED:

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