

MUNICIPAL CORPORATIONS: Any charter provision which is not a mere detail of the running of a city and in conflict with the State Constitution or State Law is void.

July 24, 1939

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Hon. Walter G. Stillwell
Prosecuting Attorney
Marion County
Hannibal, Missouri

Dear Sir:

We are in receipt of your request for an opinion under date of July 17th, 1939, which reads as follows:

"The city of Hannibal operates under a special charter granted by the legislature of this state in 1873. As you probably know, Hannibal contains approximately two-thirds of the population of Marion county. In the past, and, if I am not mistaken, since the adoption of the special charter, the citizens and property owners of Hannibal have paid county road tax in the same manner as land owners residing in the county outside the corporate limits of Hannibal. Marion county has provided and cared for the poor residing in Hannibal and have provided them with food, shelter and medical attention at the County Infirmary at Palmyra. Also Marion county, since the adoption of the charter, has defrayed the expenses of the indigent insane in the various state hospitals, from Hannibal. Under and by virtue of Section One of the city Charter found on Page 62 of the Revised Ordinances of the City of Hannibal for 1934, it is provided that the citizens of Hannibal shall be exempt from all county

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tax for the support of the poor or for the maintainance or construction of any roads or bridges outside of the limits of the city of Hannibal in the county of Marion. It further provides that the city shall provide for the maintainance and support of it's own poor. The question has arisen and the opinion of your office is requested on the following:

- "1. Is this provision of the city charter constitutional?
2. Are citizens of Hannibal exempt from the county tax for the construction and maintainance of roads outside the corporate limits of the city?
3. Is Hannibal, proper, responsible for it's own poor?

"It is my thought that this charter provision is inconsistent with the constitutional provisions of the state of Missouri, providing for equal taxation of all of it's citizens.

"I am sending under separate cover the latest revision of our city ordinance and request that you return it to me when it has served it's purpose. I am quite anxious to have this opinion at your earliest possible opportunity."

Section 1, Article 8, page 62 of the charter of the city of Hannibal reads as follows:

"The City of Hannibal shall at its own proper expense, make, maintain and keep in repair all streets, roads and bridges within the limits of the city, and provide for the maintenance and support of its own poor, and in consideration thereof the citizens of Hannibal shall be exempt from all county tax for the support of the poor, or for the construction or

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maintenance of any roads or bridges in any part of Marion County, outside of the limits of said city, or for paying for any right of way for the same, and if the County Court of Marion County shall make any expenditure for the support of the poor, or for the construction, maintenance or repairs of any road or bridge, or the right of way for the same in any part of said city, and pay for the same out of the county funds, said county shall pay to the Treasurer of the City of Hannibal for the use of said city, a sum of money which shall bear the same proportion to the amount so expended as the assessed value of all property subject to county taxation in the City of Hannibal shall bear to the assessed value of similar property in the remainder of the city (county)."

This part of the charter of the city of Hannibal was approved, and went into effect March 21st, 1873.

1.

Section 7370 R. S. Missouri, 1929, reads as follows:

"Any county which now has or may hereafter have within such county a city having a special charter and which city now has or may hereafter have a population of not less than 10,000 inhabitants and not more than 30,000 inhabitants shall, out of the funds of such county, provide for the care of the poor in said county, including poor of such city or cities, and no such city shall hereafter be exempt from any tax

for the support of the poor of such county. No money shall hereafter be refunded to any such city by any such county on account of any money expended by said county for the support of the poor of said county."

According to the decennial Federal census of 1930, the city of Hannibal had a population of 22,761, and by reason of this population comes within section 7370, supra. By reason of the amount of population bracketed in section 7370, supra, it appears that this section was specifically enacted by the legislature to nullify section 1, of the city charter of Hannibal, as above set out.

By reason of section 7370, supra, by implication section 1, of article 8, page 62 of the charter of the city of Hannibal is void and of no effect, and the constitutionality of the same is not at issue. If the constitutionality of the section was at issue, it would be based upon unequal taxation. That the charter provision above set out is void, is upheld in the case of State ex rel People's Motorbus Company of St. Louis v. Blaine, 58 S. W. (2d) 975, par. 1, 332 Mo. 582, where the court said:

"Paragraph 1 of section 1 of article 1 of the charter of the city of St. Louis provides that the city shall have power 'to assess, levy and collect taxes for all general and special purposes on all subjects or objects of taxation.' There can be no question but what this language of the charter is sufficiently broad to authorize the city to levy any kind of tax which is not inhibited by some other provision of the charter or by some constitutional or statutory provision. The charter of the city must be consistent with and subject to the Constitution and laws of the state. Ex parte Siemens v. Shreeve, 317 Mo. 736, 296 S. W. 415."

Section 7370, supra, has not been passed on by the courts of this state as to its constitutionality. The foregoing answers the first question in your request, which reads as follows:

"Is this provision of the city charter constitutional?"

11.

Your second question was:

"Are citizens of Hannibal exempt from the county tax for the construction and maintenance of roads outside the corporate limits of the city?"

Section 7890 R. S. Missouri, 1929, reads as follows:

"The county courts in the several counties of this state, having a population of less than two hundred and fifty thousand inhabitants, at the May term thereof in each year, shall levy upon all real and personal property made taxable by law a tax of not more than twenty cents on the one hundred dollars valuation as a road tax, which levy shall be collected and paid into the county treasury as other revenue, and shall be placed to the credit of the 'county road and bridge fund.'"

This section was enacted in the First Extra Session Laws of 1921, page 172.

According to the decennial Federal census of

1930 the population of Marion county was 33,493 and comes within section 7890, supra.

This section being a later statutory enactment nullifies that section of the charter of Hannibal, section 1, article 8, in reference to payment of a road tax levy outside of the city and the charter provision is void. It could also be attacked on the question of unconstitutionality as to unequal taxation.

It was held in *State ex rel v. Blaine*, supra, that the charter provision must not be in conflict with the state constitution or state laws. It was also held in the case of *Siemens v. Shreeve*, 296 S. W. 415, l. c. 417, par. 4-6, where the court said:

"Important restraining provisions, however, appear in clauses of section 16, art. 9, of the Constitution of 1875, the very section that permits cities having a population of more than 100,000 inhabitants to frame charters for their 'own government' and under which this charter was framed, limiting the exercise of this power to the formation of such charters only as shall be 'consistent with and subject to the Constitution and laws of the state,' and 'always be in harmony with and subject to the Constitution and laws of the state.' Both the grant and the limitation must be given effect. If the limitation is construed to mean that the charter must be consistent with every provision of the Constitution and every law of the state, then the limitation simply nullifies the grant. *Kansas City v. Oil Co.*, 140 Mo. 458, loc. cit. 470, 41 S. W. 943. On the other hand, to treat the charter as 'out of, and beyond, all legislative influence,' would be to nullify the express constitutional limitation. *State ex rel. Kansas City v. Field*, 99 Mo. 352, loc. cit. 355, 12 S. W. 802."

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Also, in the case of Tremayne v. City of St. Louis, 6 S. W. (2d) 935, l.c. 941, par. 8, where the court said:

"But the charter provisions, in order to avoid conflict, do not have to accord with the state law in mere matters of detail. The charter provisions must not be out of harmony (in the public and otherwise) with the general laws of the state, and the public policy therein announced. Kansas City v. Oil Co., 140 Mo. loc. cit. 469, 41 S. W. 943."

According to the holding in the above case, and taking into consideration the facts set out in your request, it is very apparent that the charter provision is not a mere matter of detail, but wholly sets up a new method of taxation.

111.

Your third question is as follows:

"Is Hannibal, proper, responsible for it's own poor?"

Section 9986 R. S. Missouri, 1929, partially reads as follows:

"It shall be the duty of the county treasurer to separate and subdivide the revenues of such county in his hands, and as they come into his hands, in compliance with such order of court and the provisions of this chapter; and it shall be his duty to pay out the

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revenues thus subdivided, on warrants issued by order of the court, on the respective funds so set apart and subdivided, and not otherwise; and for this purpose the treasurer shall keep a separate account with the county court of each fund, which several funds shall be known and designated respectively as the pauper fund, * * * "

Under this section it is the duty of the county treasurer to set aside a fund for keeping paupers of the county.

Section 12950 R. S. Missouri, 1929, reads as follows:

"Poor persons shall be relieved, maintained and supported by the county of which they are inhabitants."

This section in itself nullifies that part of the city charter of Hannibal, supra, as to the keeping of poor persons by the city of Hannibal. That it is nullified is upheld in the cases of: State ex rel People's Motorbus Company of St. Louis v. Blaine, 58 S. W. (2d) 975, par. 1, 332 Mo. 582; Siemens v. Shreeve, 296 S. W. 415, l.c. 417, par. 4-6; and Tremayne v. City of St. Louis, 6 S. W. (2d) 935, l.c. 941, par. 8, herein set out.

Section 12961 R. S. Missouri, 1929, reads as follows:

"The several county courts shall set apart from the revenues of the counties such sums for the annual support of the poor as shall seem reasonable, which sums the county treasurers shall keep separate from other funds, and pay the same out on the warrants of their county courts."

This section is practically the same as section 9986, supra.

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CONCLUSION

In view of the above authorities, it is the opinion of this department that section 1, of the city charter of Hannibal, which appears in the revised ordinances of the city of Hannibal for 1934, under section 8, on page 62, has been nullified by the above sections of the statute of Missouri, 1929. It is unnecessary for this department, even if we should decide to give our opinion on the constitutionality of the same, to enter into that matter. This department does not pass on the constitutionality of statutes or charters, as we believe this is a matter for the courts to decide.

It is further the opinion of this department that the citizens of Hannibal are not exempt from the county tax for the construction and maintenance of roads outside the corporate limits of the city.

It is further the opinion of this department that the city of Hannibal proper, is not primarily responsible for its own poor and that the county should provide for the poor out of the general county revenue funds, after allotment to the pauper fund.

Respectfully submitted,

W. J. BURKE
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

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