

CITIES OF THE) Relating to the Extension of its City
THIRD CLASS) Limits.

3-26

March 22, 1934.



Mr. H. W. Thomas, Jr.
City Engineer
Moberly, Missouri

Dear Sir:

This department is in receipt of your letter dated November 15th, wherein you state the following:

"The City of Moberly (a City of the Third Class) desires to extend the Corporate limits, and we are anxious to know if there are any limitations that we must exercise in this undertaking?

It is our understanding that a majority vote only, is required; that is, of the legal voters within the present Corporate Limits.

Is there any other procedure or permission from any State Administration necessary before this extension can be made? * * * *

Section 6720 R. S. Mo. 1929, provides for the extension of city limits of cities of the third class and reads in part as follows:

* * * * "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."

The only limitation upon the power of the city to extend its limits is that this power be exercised reasonably. Such was the holding in the case of Copeland vs. The City of St. Joseph, 126 Mo. 417. In this case our Supreme Court quoted with approval the following excerpt from a decision of the Supreme Court of Texas:

"* * * * * Under the decisions of our Supreme Court, we understand the correct rule to be that the incorporation will be held valid, although a reasonable amount of land not in actual occupation be included; but if the excess be such as, in effect, to evidence an attempted fraud upon the law, and territory be embraced that can not fairly be termed a part of the town, it will be annulled." * * * *

In the case of State ex inf. Lashley vs. City of Maplewood, 193 S. W. 989, we find a very comprehensive decision respecting powers of cities of the third class to extend their corporate limits. The Court made the following statement as to the reasonableness of the ordinance in that case, l. c. 991:

"We further held in Parker vs. Zeisler, supra, that an ordinance extending the corporate limits of the city to take in contiguous territory suitable for city purposes and densely populated, and already receiving many of the advantages of the city, is neither unreasonable nor inequitable. While it is true that in the case at bar the territory taken in is not densely populated, a large part of it is subdivided into lots and blocks, and the evidence very clearly establishes that the people residing in this adjacent territory had for sometime prior to the extension received many of the advantages of the city, as for instance in the supply of water, to some extent as to sewerage and drainage, and protection against fire." * * * "In short, our conclusion on reading the testimony is in harmony with that arrived at by the learned trial judge, that it was a reasonable exercise of power on the part of the city authorities of Maplewood in extending the limits of that city so as to take in this district."

Hon. H. W. Thomas, Jr.

-3-

March 22, 1934.

From your inquiry we take it that your City is one operating under the general statutes of cities of the third class and is not organized or operating under any special charter.

CONCLUSION.

It is therefore the opinion of this office that Section 6720 R. S. No. 1929, controls the extension of city limits of cities of the third class, and that so long as the powers there given are exercised in a reasonable manner the Courts will not interfere with the actions taken in accordance therewith.

Respectfully submitted,

HARRY G. WALTNER, JR.
Assistant Attorney General.

APPROVED:

ROY MCKITTRICK
Attorney General.

HGW:MM