

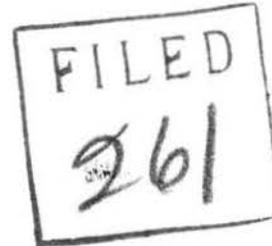
CITIES:

Statutes imposing liability on first and second class cities for riot damage do not apply to Constitutional Charter City.

June 12, 1969

OPINION NO. 261

Honorable Kenneth J. Rothman
Representative
Room #410
36th District
State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Rothman:

This official opinion is issued in response to your request dated May 13, 1969, in which you ask whether the provisions of Section 537.130 and 537.140, RSMo 1959, apply to the City of University City. Section 537.130 RSMo makes participants in a riotous assemblage liable for damages to person and property arising out of the assemblage, and Section 537.140 makes cities of the first and second class liable for such damage with right of recovery over against the participants.

The City of University City adopted a charter on February 4, 1947, pursuant to the provisions of Section 19 of Article VI of the Constitution of Missouri, 1945. It is, therefore, a "Constitutional Charter City" as defined in Section 82.010 RSMo.

Section 19 of Article VI of the Constitution of Missouri provides in part as follows:

" * * * If the charter be approved by the voters it shall become the charter of such city at the time fixed therein and shall supersede any existing charter and amendments thereof. * * * "

In the case of *Kansas City vs. Marsh Oil Company*, 140 Mo. 458 the Supreme Court said l.c. 471:

" * * * A charter is the organic law of a city in this State whether it emanate from the General Assembly, or is framed and adopted by the people of the municipality by authority of the Constitution. * * * "

It follows that the "charter" of a city whether such charter consisted of statutes applicable to one of the four classes of cities or a "special" charter" created by enactment of specific statutes providing for the establishment of such city is completely superceded by the adoption of a charter under the provisions of Section 19 of Article VI of the 1945 Missouri Constitution.

Honorable Kenneth J. Rothman

It is apparent, therefore, that a law applicable to cities of one or more of the four classes in Missouri do not apply to a city which has adopted a charter under provisions of Section 19 of Article VI of the 1945 Constitution of Missouri.

Our conclusion is supported by an additional circumstance with regard to University City. Prior to its adoption of a charter in 1947, University City was a city of the fourth class. Sections 537.130 and 537.140 RSMo, therefore, never by their terms applied to the City of University City at any time.

CONCLUSION

It is the official opinion of this office that Sections 537.130 and 537.140, RSMo 1959, imposing liability on cities of the first and second class for damages from riotous assemblage, do not apply to a city which adopted a charter pursuant to Section 19 of Article VI of the Missouri Constitution of 1945.

The foregoing opinion, which I hereby approve, was prepared by my Special Assistant, Charles B. Blackmar.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in dark ink and is positioned above the typed name and title.

JOHN C. DANFORTH
Attorney General