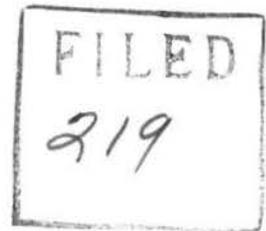


CITIES, TOWNS & VILLAGES: The provisions of Section 70.610,
CONSTITUTIONAL CHARTER CITIES: RSMo, which authorize the govern-
PENSIONS: ing body of a municipality to elect
 to come within the provisions of
the Missouri Local Government Employees' Retirement System prevail
over a charter provision of a constitutional charter city which
requires that employee pension or retirement plans be submitted to
the voters and that such a city may elect to come within the Local
Government Employees' Retirement System by a majority vote of the
governing body of such city without submitting the question to
the voters.

OPINION NO. 219

October 27, 1972

Honorable Leo W. Schrader
State Representative
815 North Byers
Joplin, Missouri 64801



Dear Representative Schrader:

This opinion is in response to your opinion request in which
you ask:

"May a Home Rule Charter City have authority
to elect to provide pension and retirement
benefits for its employees under the 'Mis-
souri Local Government Employees' Retirement
System' (VAMS Section 70.600 et seq) without
submission of the question to the voters as
required in city's Home Rule Charter?"

You also refer to Section 70.610, RSMo, which provides:

"Each political subdivision, by a majority
vote of its governing body, may elect to
become an employer and cover its employees
under the system, as follows:

(1) The clerk or secretary of the polit-
ical subdivision shall certify the election
to be an employer to the board within ten
days after the vote of the governing body.
The effective date of the political subdivi-
sion's coverage is the first day of the cal-
endar month next following receipt by the
board of the election to be an employer, or

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the operative date of the system, whichever is the later.

(2) An employer must cover all its employees who are neither policemen nor firemen and may cover its policemen or firemen or both."
(Emphasis added)

In addition we understand that Section 5.08 of the Charter of the City of Joplin, in question here, provides in part:

"Additional or substitute pension or retirement plans may be established for any department or agency as authorized by the Constitution or by law, but only after submission to an adoption by the voters."

Such a city is a political subdivision as defined in Section 70.600, RSMo Supp. 1971.

The history of the Missouri case law respecting municipal home rule is thoroughly discussed in "Municipal Home Rule: An Evaluation of the Missouri Experience", 33 Mo.L.Rev. 45 (Winter 1968), James E. Westbrook, and "Local Government in Missouri: The Crossroads Reached", 32 Mo.L.Rev. 73, 78 (Winter 1967), Peter W. Salsish, Jr. Thus, there is little point in repeating a detailed analysis here.

Recent changes in the Missouri Constitution appear additionally to make an examination of the entire case law relating to municipal home rule inappropriate. That is, the previous provision in Section 19, Article VI that the charter of such a city had to be "consistent with and subject to the constitution and laws of the state" was repealed by House Joint Resolution No. 24, 76th General Assembly, adopted by the voters October 5, 1971, which added Section 19(a) to Article VI of the Missouri Constitution, providing:

"Any city which adopts or has adopted a charter for its own government, shall have all powers which the general assembly of the state of Missouri has authority to confer upon any city, provided such powers are consistent with the Constitution of this State and are not limited or denied either by the charter so adopted or by statute. Such a city shall, in addition to its home rule powers, have all powers conferred by law."

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The precise question then is whether the statutory provisions authorizing the adoption of the plan by the "governing body", Section 70.610, being a separate grant of power by the state legislature is such that it precludes the imposition of the additional charter requirement that requires a favorable vote of the people before the governing body is authorized to act.

It is our view that the provision of the Constitution that such cities shall have "all powers conferred by law" means that a statute enacted by the General Assembly can give or expand powers limited by a city charter. Such a statute authorizes such city to proceed under the statute any provision of the city charter to the contrary notwithstanding. When a legislative grant of power is made to a constitutional charter city any limitation on such power by the city charter is nullified.

Here the legislature has expressly conferred power upon the governing body of the city to elect to become an employer and to cover its employees under the system. This authority is, in our view, consistent with the provision of Section 19(a) of Article VI which provides that such a city shall have all powers conferred by law in addition to its home rule powers. Section 70.610 confers power on the city to become a member of the system upon a majority vote of the governing body of the city. The requirement in the city charter that there shall be submission to the voters of pension or retirement plans purports to deny the city the power to act under authority conferred on it "by law", that is by a majority vote of the governing body of the city and such charter provision is a nullity when the city acts under the provisions of the statute. It follows that such a legislative grant of power controls and that the governing body may elect to bring the employees of the city within the system notwithstanding the charter provision.

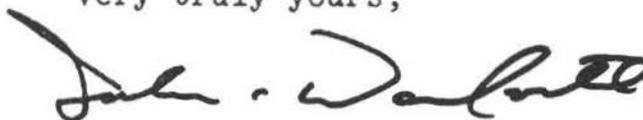
CONCLUSION

It is the opinion of this office that the provisions of Section 70.610, RSMo, which authorize the governing body of a municipality to elect to come within the provisions of the Missouri Local Government Employees' Retirement System prevail over a charter provision of a constitutional charter city which requires that employee pension or retirement plans be submitted to the voters and that such a city may elect to come within the Missouri Local Government Employees' Retirement System by a majority vote of the governing body of such city without submitting the question to the voters.

Honorable Leo W. Schrader

The foregoing opinion, which I hereby approve, was prepared
by my assistant, C. B. Burns, Jr.

Very truly yours,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General