

CITIES - Under special Charter, Legislature cannot amend a charter of a city under special charter, but enactment of a law uniformly to apply to all cities under special charter permitting the levying and collecting of taxes.

January 25, 1937

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Honorable Geo. D. Clayton Jr.
Senator 13th District
Missouri Senate
Jefferson City, Missouri

Dear Senator:

This is to acknowledge your letter as follows:

"The City of Hannibal, which operates under a special charter issued in 1873, is anxious to have the charter amended so that its taxing powers will be broadened.

Will you please advise me if in your opinion the charter can be amended?"

Appended to your letter was a copy of a resolution passed by the city council of the City of Hannibal. Said resolution in part reads as follows:

"NOW THEREFORE BE IT RESOLVED; That the Council authorize and instruct the proper City, County and State Officials to take whatever steps are necessary to amend Section 6 Article IV of the Charter of the City of Hannibal so that it will read the same as Section 6840, Article 4, Chapter 38 as the same appears on Pages 277-8, Laws of Missouri, 1931,"

As stated in your letter the City of Hannibal operates under a special charter issued in 1873. We do not have a copy of the charter and do not know what section 6, article IV of the charter provides. However, it is not essential to a determination of your question. The present Constitution of Missouri was adopted

in 1875 and Section 7 of Article IX provides:

"The General Assembly shall provide, by general laws, for the organization and classification of cities and towns. The number of such classes shall not exceed four; and the power of each class shall be defined by general laws, so that all such municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. The General Assembly shall also make provisions, by general law, whereby any city, town or village, existing by virtue of any special or local law, may elect to become subject to, and be governed by, the general laws relating to such corporations."

Pursuant to Section 7 of Article IX, the Legislature classified cities into cities of the first, second, third and fourth classes. Chapter 38, Revised Statutes 1929. Hannibal has a population, according to the 1930 United States Census, of 22761 inhabitants. Official Manual, State of Missouri 1935-36. The City of Hannibal has a population sufficient to enable it to be a city of the Third Class. Sections 6092, 6095.

Article 13, Chapter 38 relates to "Cities and towns under special charters". As the City of Hannibal was granted a charter in 1873 (prior to the adoption of the constitution in 1875), we assume that it has never operated other than as a city under special charter. While it has the right to take advantage of the article relating to cities of the Third Class, it has not done so. Article IV, Chapter 38. In *Kansas City et al v. Scarritt et al* 127 Mo. 642 the Supreme Court of Missouri in 1895 reviewed the history of the present Section 7, Article IX of the Constitution and observed at page 652 as follows:

"The record of legislation prior to 1875, contained in the session acts, furnishes the facts from which it is easy to infer the reasons that led to the adoption of those sections of the constitution.

"City charters were the favorite ground for special legislation. The constant tinkering to which those instruments were subjected, not only created confusion and uncertainty in construing the law, but covered the state with specimens of incongruous pieces of patchwork legislation, * * * * *.

The object of the constitution of 1875, in dealing with this topic, was to secure some uniformity in the organization and action of municipal corporations in the state. Hence the strict limitations laid down in regard to the classification of cities, and the prohibition of more than four classes of city charters (even when created by general laws of incorporation) under the new constitution. Leaving, however, special charters granted previously to continue in operation."

The legislature is restricted to the enactment of laws that are uniform. Special legislation is not permitted.

"It is well settled that a law which includes all persons who are in or who may come into like situations and circumstances is not special legislation." *Elting et al v. Hickman et al*, 172 Mo. 237, 257.

Thus the legislature cannot amend the present charter of the City of Hannibal because it would be special legislation. However, the legislature could enact a law which would be general and applicable in scope to all cities of the size of Hannibal. To illustrate, the legislature could enact a law providing that any city having a special charter and containing 30,000 inhabitants and not less than 10,000 could by ordinance authorize the levying and collection of taxes. Thus, the legislature could enact Section 6840 found in Laws of Missouri 1931, pages 276, 277 and 278 and make it apply to cities under special charter. The

statute could be drawn so as to include it under Article 13, Chapter 38 R. S. Mo. 1929.

From the above it is our opinion that the charter of the City of Hannibal cannot be amended. In *Kansas City ex rel v. Scarritt*, 127 Mo. 642 l. c. 653, 654, the court said:

"The act under review relates solely to matters of internal municipal government. It seeks to amend the existing charter of Kansas City in a number of ways; and its last passages indicate plainly that such is its main design. It can not be supported without nullifying the guaranty which the fundamental law gives, in section 16, above quoted, against invasion of the right of local self-government in the internal affairs of such cities.

While we should never pronounce an act of the general assembly void for want of conformity to the constitution unless it is very clearly so, yet, when such is the case, our duty requires us to declare it, and thus vindicate the supremacy of the organic law as the paramount expression of the will of the people of the state.

We consider that the act in view is a palpable departure from the precepts of the constitution, and that it can not stand."

However, it is our further opinion, the legislature could by statute authorize cities under special charters with the same population as the City of Hannibal, to levy and collect the same taxes as is authorized by Section 6840 supra, for cities of the Third Class.

Yours very truly,

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APPROVED:

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