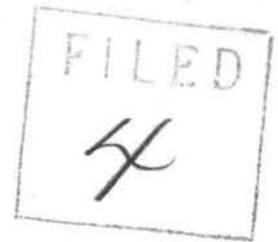


MUNICIPALITIES: Authority of City of Carthage to install parking  
COUNTIES: meters around county square.  
MOTOR VEHICLES:

EM  
2/2/1948

April 6, 1948

H-15



Honorable Ralph Baird  
Prosecuting Attorney  
Jasper County  
Joplin National Bank Building  
Joplin, Missouri

Dear Sir:

This will acknowledge receipt of your request for an opinion, which reads:

"Enclosed please find certified copy of order of the Jasper County Court under date of March 12, 1948, and photostat of certified copy of order of the Jasper County Court under date of May 16, 1895, and certified to on April 6, 1946. Also copy of my opinion given to the Jasper County Court dated November 3, 1947, in accordance with request of the Jasper County Court that I obtain an opinion from your office.

"At the time of writing my opinion, I did not have before me a copy of the 1895 order. It is my opinion that this does not change the situation. However, I request that you examine these instruments and my opinion and advise me as to whether you hold a contrary view."

The certified copy of order of the County Court, attached to your request and dated March 12, 1948, merely directs the Prosecuting Attorney to request an opinion of the Attorney General of the State of Missouri as to whether the City of Carthage has the right and privilege to install parking meters on the inside curb of the public square on county property.

The photostatic certified copy of an agreement and order of the County Court, dated May 16, 1895, shows wherein the City of Carthage and the County Court of Jasper County, Missouri, entered into an agreement in which the County Court released a strip of land twenty-five feet wide around the county

square, upon which the courthouse is located, to the City of Carthage in order that the city could widen the streets around the public square, which prior thereto were only fifty feet wide. Furthermore, the city agreed to assume all costs of construction and maintenance of said addition to the street and relieve the county of such assessment by reason of owning the land upon which the courthouse is situated. Furthermore, it was agreed that said twenty-five foot strip of land shall be used only as a public driveway, and upon which there shall not be constructed any railway or other track, nor shall there be laid thereunder any water, gas or other main, or pipe of any nature whatsoever. We fail to see wherein the foregoing order of 1895 in any manner has any bearing upon the question in the instant case. Even assuming that it is a valid and binding order for the sake of this opinion, the installation of the so-called mechanical parking meters will in no manner violate any of the provisions of that order.

In rendering this opinion, we more or less must follow the same line of reasoning and authorities set forth in your opinion to the County Court. It is well established that, while considerable revenue will be derived by the installation of said parking meters, the appellate courts have held that the primary purpose of installing said parking meters is for police regulation. The Springfield Court of Appeals, in *Wilhoit v. City of Springfield*, 171 S.W. (2d) 95, l.c. 99, after a lengthy discussion and citing many authorities to support the contention that the installation of said parking meters is for police regulation, said:

"From the foregoing observations it is our conclusion that the ordinance with which we are concerned, providing for the zoning of the streets of the city or parts thereof, placing time limits on parking and providing for the installation of parking meters for measuring the time, is a valid exercise of the city's police power and does not illegally or unreasonably interfere with or wrongfully deprive plaintiffs of any right or privilege that they may have as abutters. (Cases cited.)"

Also, in *State v. City of Mexico*, 197 S.W. (2d) 301, l.c. 303 and 304, the court, in holding that the regulation of parking of automobiles on streets by means of parking meters is a valid

exercise of the police power of the city, said:

"The regulation of the parking of automobiles on its streets by a city is a valid exercise of the State's delegated police power. City of Clayton v. Nemours, 353 Mo. 61, 66(3), 182 S.W. (2d) 57, 59(4), appeal dismissed, 323 U.S. 684, 65 S.Ct. 560, 89 L. Ed. 554; City of Clayton v. Nemours, 237 Mo. App. 167, 180, 164 S.W. (2d) 935, 942(16); Nemours v. City of Clayton, 237 Mo. App. 497, 509, 175 S.W. (2d) 60, 65(1, 2). This is also true of such regulation by means of parking meters. Wilhoit v. City of Springfield, 237 Mo. App. 775, 784, 786, 171 S.W. (2d) 95, 98(2,9). Additional authorities are cited in Bowers v. City of Muskegon, 305 Mich. 676, 9 N.W. 2d 889; Cassidy v. City of Waterbury, 130 Conn. 237, 33 A. 2d 142; Hickey v. Riley, Or., 162 P. 2d 371; Kimmel v. City of Spokane, 7 Wash. 2d 372, 109 P. 2d 1069; Annotations, 130 A.L.R. 316; 108 A.L.R. 1152, 72 A.L.R. 299. The instant record presents no issue that the ordinance before us is aught but a valid exercise of the police power of the City of Mexico."

In the foregoing decision, State v. City of Mexico, the Supreme Court held the City of Mexico, a city of the third class, (we assume Carthage is also a third-class city) has exclusive authority under the law to regulate motor vehicles and their use on public highways in said city. In so holding, the court said:

"The State of Missouri has delegated to the City of Mexico as a city of the third class authority to prevent the obstruction of its sidewalks and streets by vehicles (Sec. 6952, R.S. 1939, Mo. R.S.A.) and, along with other cities of the State, specific authority to '\* \* \* by ordinance, make additional rules of the road or traffic regulations to meet their needs and traffic conditions; \* \* \* regulate the parking of

vehicles on streets by the installation of parking meters for limiting the time of parking and exacting a fee therefor or by the adoption of any other regulatory method that is reasonable and practical \* \* \* .' Laws 1943, pages 659-661, amending Sec. 8395, R.S. 1939, Mo. R.S.A. Said Sec. 8395 is a part of Art. I of Chap. 45, R.S. 1939, Mo. R.S.A. Section 8366 thereof provides in part: 'This article shall be exclusively controlling on the \* \* \* regulation \* \* \* of motor vehicles, their use on the public highways' et cetera. And Sec. 8367, Id., entitled 'Definitions,' defines 'Highway' as: 'Any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways or alleys in any municipality.'

While your request is vague as to just where the parking meters are to be located, I am now informed by you that the meters are to be installed upon the sidewalk constructed by the County Court referred to in the foregoing certified photostatic copy of order of the County Court. The sidewalk referred to is located between the courthouse square and the strip of land released by the County Court to the City of Carthage for street purposes. Said sidewalk has been continuously used as other sidewalks in the City of Carthage by pedestrians since its construction.

There is an abundance of authority holding that the right of a city to regulate extends to all public highways, de jure or de facto, that it makes police power applicable to private land when said land is used as a de facto public highway. See City of Clayton v. Nemours, 182 S.W. (2d) 57, 1.c. 60. Also, State ex rel. Audrain County v. City of Mexico, 197 S.W. (2d) 301, 1.c. 304.

In the City of Clayton v. Nemours, 182 S.W. (2d) 57, Glenridge Avenue was established as a private highway, however, it was devoted to a public use by the owners thereof, although not dedicated to public use by said owners. The court held, in so devoting the use of their property, the owners constituted Glenridge Avenue a de facto public street and was subject to reasonable municipal police regulations, including the parking of automobiles.

The Supreme Court has heretofore held in State ex rel. Audrain County v. City of Mexico, supra, that the City of Mexico had the power to exercise police power to install parking meters on that portion of land owned by the county knowingly permitted by the county to be used as a street. We are convinced that the same rule is applicable to sidewalks. The sidewalk in this instance was constructed by your County Court, but ever since has been used as a public highway by pedestrians and is subject to regulation by the city as other sidewalks and highways. Section 6952, supra, specifically vests authority in the city to regulate sidewalks, as well as streets, avenues, alleys and other public places. McQuillin, Municipal Corporations, Second Edition, Vol. 4, Section 1390, in part, reads:

"The municipality has the same control over the sidewalk as any other part of the street, and this is so although the sidewalk was built by the abutting owner."

The great weight of authority holds that the word "street" includes sidewalks, especially is this true in the absence of an intent to not include sidewalks. In Vol. 44, C.J., Section 3598, page 883, we find the following general principle of law:

"The word 'street,' as ordinarily used, includes a sidewalk, although it is sometimes used in its restricted sense as including only the roadway."

See also Knapp, Stout & Company v. Transfer Railway Company, 126 Mo. 26, l.c. 34-35.

#### CONCLUSION

Therefore, it is the opinion of this department that the City of Carthage, upon enacting the proper ordinance, may install parking meters on the sidewalk around the courthouse square, which sidewalk was constructed by the County Court and has been used ever since by pedestrians as other sidewalks are in the City of Carthage.

Respectfully submitted,

APPROVED:

AUBREY R. HAMMETT, Jr.  
Assistant Attorney General

J. E. TAYLOR  
Attorney General

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