

December 22, 1948

COUNTY COURTS:  
BUDGET LAW:  
CONSTITUTIONAL LAW:

Sec. 18, Art. 6, Constitution, is self-enforcing and county court upon request and charter commission should provide in budget for expense of holding election for approval or rejection of charters and should include in budget actual expenses of the charter commission, such amount to be determined by the county court.

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Mr. William B. Norris, Jr.  
Legal Advisor to County Court  
Buchanan County  
St. Joseph, Missouri

12-27

Dear Sir:

This is in answer to your letter of recent date requesting an official opinion of this department and reading as follows:

"The Charter Commission, appointed by the circuit and probate judges of Buchanan County in accordance with the provisions of Art VI, Sec 18 (g) of the Constitution of Missouri of 1945, has suggested to the County Court of this county that the county budget for 1949 include a sum adequate to cover the proposed expenditure for a special election held, as provided in Art VI, Section 18 (h) (i) for the purpose of enabling the qualified electors of Buchanan County to vote upon the charter framed by the Commission. The Charter Commission also has requested the County Court to include in the county budget the sum of \$10,000.00 which is to provide for the payment of necessary expenses of the Commission incurred in connection with the framing of said charter.

"As you are aware, the annual budget for Buchanan County is required to present a complete financial plan for the ensuing budget year. The budget for the year 1949 is now in the course of preparation, and I would appreciate being informed at your earliest convenience whether in your opinion the constitutional provisions relating to the adoption of county charters are self executing and whether the County Court may without any legislative enactment include

in the budget for 1949 the cost of holding the proposed election and may properly appropriate a sum adequate for such purpose.

"I should also appreciate receiving your opinion whether the County Court may without legislative authority properly include in the budget for 1949 and appropriate a sum of money sufficient to cover the actual and necessary expenses incurred by the commission in framing the Charter, and if so, whether the County Court or the Commission shall finally determine what expenses are necessary and the amount thereof. In this connection, it will be noted that Article VI, Section 19 of the Constitution relating to the framing and adoption of charters by cities having over 10,000 inhabitants specifically provides that all necessary expenses of the Commission shall be paid by the city, whereas Art. VI, Section 18 of said Constitution relating to county charters is entirely silent in this regard."

Section 18, Article VI of the Constitution of Missouri, 1945, provides for the framing and adoption of the county charters by any county in this state containing more than 85,000 inhabitants. Such section is a long and complete one and sets out in full detail the procedure for framing and adopting a county charter. The general rule, with regard to whether or not a constitutional provision is self-enforcing, is found in 12 C.J. page 729 and provides as follows:

"Constitutional provisions are self-executing when there is a manifest intention that they should go into immediate effect, and no ancillary legislation is necessary to the enjoyment of a right given, or the enforcement of a duty imposed."

Such rule was cited with approval by our Supreme Court in the case of State vs. Ellis, 28 S.W. (2d) 363. It is our opinion that Section 18, Article VI of the Constitution is self-enforcing and requires no legislation to put it into effect.

While the Legislature has enacted laws to implement Section 19, Article VI of the Constitution relating to framing of charters by cities containing over 10,000, such laws being found as Sections 1 and 2, Laws of Missouri, 1945, page 1309, we do not believe that such legislative determination prevents Section 18, Article VI of the Constitution being held to be self-enforcing. Section 2 of Laws of Missouri, 1945, page 1309, provides for the Board of Election Commissioners or other officials having charge of municipal elections in cities of over 10,000, to give the notice and determine the form of ballot and details of the election in accordance with the elections laws of the state applicable to such cities.

It is to be noted that Section 18 (i), Article VI of the Constitution provides for the proper body to give the notice of elections as provided for in such section. It is our view that Section 18 (h), providing for the fixing of the date of the election by the Charter Commission and the submission by the Commission in its discretion of alternative sections or articles, read in conjunction with Section 18 (i), provides that the form of ballot must be determined by the officials charged with conducting elections in the county. It is further our view that such election must be conducted in accordance with the general election laws of the state. Therefore, we believe that those matters contained in Section 2, Laws of Missouri, 1945, page 1309, with reference to charters in cities of over 10,000, are sufficiently set out in Section 18 of Article VI, so that such section is self-enforcing.

Under Sections 16 and 17 of Article IX of the Constitution of Missouri of 1875, which were provisions relating to charters of cities of over 100,000 population, the General Assembly in 1887 enacted some 54 sections and provided in Section 5, Laws of Missouri, 1887, page 43, with relation to the form of the ballot, as follows:

" \* \* \* At such election the form of the ballots may be 'for the charter,' followed by sufficient space to the right thereof, on which may be written or printed the words 'yes' or 'no,' in accordance with the choice of the person voting such ballot. In the event of any alternative section or article being presented for the choice of the voters, any form of ballot may be used which will clearly indicate the choice of the person voting such ballot between such alternative sections or articles."

The courts have upheld a charter of Kansas City adopted under such constitutional provisions and laws. Since the provisions found in Section 18 of Article VI are as sufficient in regard to the form of the ballot at a charter election as were such laws, it is our view that such constitutional provision is self-sufficient and needs no laws to carry it into effect.

Since the cost of holding county elections is one enjoined upon the counties, we believe it to be clear that upon request of a Charter Commission properly appointed, the county court must include in its budget an amount sufficient to pay the expenses of an election, the date of which is to be set by the Charter Commission in its budget. In the case of Lancaster vs. County of Atchison, 180 S.W. (2d) 706, the Supreme Court, in discussing the powers of counties, said l.c. 708:

"Both parties to this suit agree that counties, like other public corporations, can exercise the following powers and no others: (1) those granted in express words; (2) those necessarily or fairly implied in or incident to the powers expressly granted; (3) those essential to the declared objects and purposes of the corporation--not simply convenient, but indispensable. \* \* \* \*"

From the provisions of Section 18 of Article VI of the Constitution providing that the Charter Commission is to frame a charter to be voted upon by the people, we believe it to be one of the incidental powers of the county to pay the expenses necessarily incurred in framing such a charter. In the case of Rinehart vs. Howell County, 153 S.W. (2d) 381, the Supreme Court held that necessary expenses incurred by a prosecuting attorney in the discharge of his official duties should be paid by the county. We believe the rule to be equally applicable here and hold that the expenses necessarily incurred by the Charter Commission in framing a charter for Buchanan County should be included in the county budget. However, the necessary expenses of the Charter Commission and the amount to be budgeted for such necessary expenses is a matter to be determined by the county court. We believe the fact that Section 18 of Article VI of the Constitution is silent with regard to the payment of necessary expenses of the Charter Commission, while Section 19 of Article VI, relative to city charters, provides that the necessary expenses of the Commission are to be paid by the city, does not make it any the less the duty of the county to pay the necessary expenses of such Commission as such necessary expenses are determined by the county court.

CONCLUSION

It is the opinion of this department that Section 18 of Article VI of the Constitution of Missouri, 1945, is self-enforcing. It is further the opinion of this department that when requested by the County Charter Commission, it is the duty of the county court to include in its budget a sum sufficient for defraying the expense of an election held for the acceptance or rejection of a charter framed by such Commission. It is further the opinion of this department that the necessary expense of such Commission in framing a charter should be included in the county budget and that the amount of such necessary expense is to be determined by the court.

Respectfully submitted,

C. B. BURNS, JR.  
Assistant Attorney General

APPROVED:

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J. E. TAYLOR  
Attorney General

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