

MUNICIPALITIES: Kansas City may enact ordinances providing
STREETS: for reversible lanes for expediting traffic
TRAFFIC REGULATIONS: on Broadway from Linwood to Westport Avenue.

July 8, 1948



Honorable David M. Proctor
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Kansas City 6, Missouri

7-12

Dear Sir:

This is in reply to your letter of recent date, wherein you request an opinion from this department on the question of the authority of the City of Kansas City, under state statutes, to establish a "reversible lane" for traffic on Broadway from Linwood Boulevard to Westport Avenue.

The state statutes applicable, and to which you refer in your letter, are Section 8385, R. S. Mo. 1939, sub-section (c) of which provides as follows:

"(c) An operator or driver meeting another vehicle coming from the opposite direction on the same highway shall turn to the right of the center of the highway so as to pass without interference."

Also Section 8395, R. S. Mo. 1939, as amended in Laws of Missouri, 1943, page 660, sub-section (b) of which provides as follows:

"(b) Municipalities may, by ordinance, make additional rules of the road or traffic regulations to meet their needs and traffic conditions; establish one-way streets and provide for the regulation of vehicles thereon; require vehicles to stop before crossing certain designated streets and boulevards; limit the use of certain designated streets and boulevards to passenger vehicles; prohibit the use of certain designated streets to vehicles with metal tires, or solid rubber tires; 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 and prohibit or control left-hand turns of vehicles; require the use

of signaling devices on all motor vehicles, and prohibit sound-producing warning devices, except horns directed forward. No ordinance shall be valid which contains provisions contrary to or in conflict with this article, except as herein provided."

Section 31-37 of the Revised Ordinances of Kansas City for 1946, provides in part as follows:

"Upon all streets of sufficient width, except upon one-way streets, the driver of a vehicle shall drive the same upon the right half of the roadway except when the right half is out of repair and for such reason impassable, or when overtaking and passing another vehicle, subject to the limitations set forth in section 31-41.

"In driving upon the right half of a roadway, the driver shall drive as closely as practicable to the right-hand edge or curb of the roadway except when overtaking or passing another vehicle or when placing a vehicle in a position to make a left turn."

Section 31-39 of said Ordinances provides as follows:

"On all streets divided by a parkway, walk, medial strip, sunken way or viaduct, vehicles shall keep to the right of such divisions."

Broadway being one of the boulevards of the City of Kansas City, the control of traffic thereon is vested in the council and park board. Under Section 55 of Article 3 of the charter of the City of Kansas City, Revised Ordinances of 1946, page 120, it is provided as follows, in part:

" * * * The council shall have power, and it shall be its duty upon recommendation of the board, to pass ordinances for the regulation and orderly government of parks, parkways, boulevards and public grounds, and to prescribe fines and penalties for the violation of such ordinances. The council, upon recommendation of the board, may regulate the traffic on all boulevards,

parkways and highways under its control, and, upon like recommendation, it may regulate the kind and character of all vehicles used on or passing over the same, and the width and kind of tires used thereon, and may exclude heavy traffic or any kind of vehicle used or operated for commercial purposes from boulevards, parkways and parks. * * * * *

This charter provision vests in the council, on recommendation of the park board, authority to pass ordinances regulating traffic on boulevards, etc. Pursuant to this authority, ordinances providing for speed regulation, parking, control and movement of traffic on boulevards have been enacted. Sections 31-37 and 31-39, supra, are examples of ordinances enacted under the foregoing authority.

Section 31-97 of said Revised Ordinances imposes a penalty on a person who operates a vehicle on certain boulevards in the opposite direction of that designated for the movement of traffic.

A one-way traffic arrangement, such as you have described in your letter, would appear to be in conflict with Section 8385, supra, which requires persons, when operating motor vehicles, to keep as near the right-hand side of the highway as practicable. However, such arrangement would be legal if the statutes, charter and ordinances of cities make exceptions to traffic in such cities.

Kansas City is organized and operated under a special charter, and from an examination of the charter and ordinance provisions referred to herein, it appears that provisions for one-way traffic on certain streets and boulevards have been made.

Under Section 19 of Article VI of the Constitution of Missouri, 1945, cities containing a population of over 10,000 inhabitants may adopt a charter for their own government. This charter, so adopted, must be consistent with and subject to the Constitution and laws of the state. This section of the 1945 Constitution, with the exception of some amendments, not pertinent here, was brought down from the Constitution of 1875, Section 16, Article IX.

In the case of State ex rel. vs. Jost, 265 Mo. 51, the court held that the charter of Kansas City is subject to the laws of the state in all matters of state concern.

In the case of *Kansas City vs. Field*, 194 S.W. 39, the court, in discussing the question of the application of state laws to Kansas City, said, l.c. 41:

" * * * It is self-evident that since Kansas City is in Jackson county and therefore an integral component of the state of Missouri, the general laws of the state run there, and will control unless the Constitution or other laws passed pursuant thereto have abdicated this right of control. * * * "

In Volume 25, Am. Jur., page 548, Section 255, under the subject of powers of municipalities and other local authorities over highways, we find the following rule which has been applied in Missouri:

" * * * As a general rule, however, in this country the control and supervision of streets and other public ways is, to a greater or less extent, delegated to the local governmental authority. * * * "

In the case of *Ferrenbach et al. vs. Turner et al.*, 86 Mo. 416, 419, the court, in treating the question of the authority of the City of St. Louis over streets, said:

" * * * The legislature represents the public at large, and has paramount authority over all public highways, no matter how acquired. This authority may be, and is, to a large extent, delegated to the city of St. Louis over the streets therein. * * "

The Missouri lawmakers, recognizing the above principle as a policy of the state, enacted said sub-section (b) of Section 8395, Laws of Missouri, 1943, page 659, hereinabove set out.

In discussing the authority of a city over its streets under this section, the court, in the case of *Wilhoit et al. vs. City of Springfield*, 171 S.W. (2d) 95, said, l.c. 98:

"That cities have the authority to regulate parking under its police power is not open to question so long as they are not unreasonable in their regulatory measures. *Baker v. Hasler*, 218 Mo. App. 1, 274 S.W. 1095. They

may designate streets or parts of streets within its limits upon which parking shall either be prohibited absolutely or else restricted to a limited time; 'and so long as the ordinance is reasonable and necessary for the public safety, the courts will have no recourse but to enforce it, if no other obstacle to its validity exists.' * * * "

Also in the case of State ex rel. Audrain County vs. City of Mexico, 197 S.W. (2d) 300, the question there under consideration was whether the City of Mexico had authority to erect parking meters on the street around and adjoining the Courthouse. In speaking of the police powers of the cities in such cases, the court said, l.c. 303:

" * * * Municipal corporations are the result of a voluntary association of the inhabitants sanctioned by the State primarily for the purpose of local self-government subordinate to the State and at the same time constituting, although secondary, an effective instrumentality for the administration of governmental affairs. A charter, defining their powers and duties, is essential to their creation and existence, which is effected upon 'incorporation.' Cities have been a chief factor in human progress. They exercise policy making authority and have legislative powers for their local government. * * * * * The indispensability of local self-government arises from problems implicit in the safety, order, health, morals, prosperity, and general welfare of thickly populated areas. * * * * * The jurisdiction of the city attaches and that of the county ceases when rural or county territory is annexed to a municipality. * * * * * Within its authorized sphere of action, a city has been termed 'a miniature state.' Paulsen v. City of Portland, 149 U.S. 30, 38, 13 S. Ct. 750, 753, 37 L. Ed. 637. This policy of government has received practical recognition by the General Assembly of Missouri.

"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.'

In addition to the authority granted to a municipality by sub-section (b) of Section 8395, supra, to establish one-way streets, it is provided that they may, by ordinance, make additional rules of the road or traffic regulations to meet their needs and traffic conditions. Therefore, it would seem that the City of Kansas City, by virtue of the authority under its charter and the authority under Section 8395, supra, would be authorized to enact ordinances regulating traffic on Broadway, providing for "reversible lanes" thereon and fixing the hours in which traffic may be required to travel in certain directions, subject to such ordinances and regulation being reasonable.

CONCLUSION

It is, therefore, the opinion of this department that the City of Kansas City has authority, under the state statutes, to establish a "reversible lane" for traffic on Broadway from Linwood Boulevard to Westport Avenue, subject to such ordinances and regulation being reasonable.

Respectfully submitted,

APPROVED:

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