

MUNICIPALITIES:

The City of Springfield may install parking meters on streets bounding the Greene County Courthouse.



September 10, 1952

9-10-52

Honorable Milton B. Kirby
Prosecuting Attorney of
Greene County
Springfield, Missouri

Dear Sir:

Reference is made to your request for an official opinion of this department. Your request reads as follows:

"The City Council of Springfield, Missouri by a recent ordinance has installed parking meters on two sides of the Greene County Court House. The street on one side of the Court House is in the designated business district of the city of Springfield. The other street on which parking meters are installed is not in the designated business district. It is contended by the County Court that parking access on these two sides of the Court House is essential to the citizens of the county for transacting Court House business.

"The County Court of Greene County has protested the installation of parking meters surrounding the Court House. The fact is undisputed that these areas so regulated are primarily used by persons transacting business in the Court House and the county offices, such as the payment of taxes, attendance at Circuit Court, the submission of assessment lists to the County Assessor, and the recording of legal instruments in the office of the Recorder of Deeds.

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"The question which we desire to submit is whether or not a city of the second class has the power to regulate, by the installation of parking meters, parking meters in areas around a county Court House, but within the city limits which are primarily used for the transaction of business in the county offices."

A question very similar to the one you have submitted was passed upon by the Supreme Court of Missouri in the case of State ex rel. v. Mexico, 197 S.W. (2d) 301. It appears from the report of the case that the City of Mexico by ordinance established parking meter zones and provided for the use of parking meters there-with. Included in the zones were the streets surrounding land owned by the county and on which the county courthouse was located. The county court sought to prohibit the installation of parking meters upon land actually owned by the county but which was permitted to be used by the city for street purposes around the courthouse square. The Supreme Court held that by virtue of the police power delegated to the city they could install the contro-verted parking meters. The court in its opinion said:

"Highways exist primarily for the purpose of travel and transportation, and parking thereon for any extended period is a privilege. 40 C.J.S., Highways, Section 233, p. 244. In 1812, it was stated in Rex v. Cross, 3 Campbell, 224, a case involving the parking of stage coaches on a street, that: 'No one can make a stable-yard of the King's highway.' The highways are subject to reasonable regulation and supervision by the State in the exercise of its police power. State v. Dixon, 335 Mo. 478, 481 (2), 73 S.W. (2d) 385, 387(2); Park Trans. Co. v. State Highway Comm., 332 Mo. 592, 599, 60 S.W. (2d) 388, 390(5). The State may delegate this power. 40 C.J.S., Highways, Sec. 232 p. 240; 25 Am. Jur., p. 544, Secs. 253-255."

* * * * *

"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

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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 'Highways' as: 'Any public thoroughfare for vehicles, including state roads, county roads and public streets, avenues, boulevards, parkways or alleys in any municipality.'

"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 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.

"As previously ruled in this State: The law of the road extends to all public highways, de jure or de facto, embracing ways on private property if used for public travel. The necessity for regulation inherent in the use permitted gives rise to and makes the police power applicable to private land when used as a de facto public highway. City of Clayton v. Nemours, 353 Mo. 61, 66(4), 182 S.W. 2d 57, 60(7-9); City of Clayton v. Nemours,

237 Mo. App. 167, 177 et seq., 164 S.W. (2d) 935, 940(11, 12, 13, 15, 16); Nemours v. City of Clayton, 237 Mo. App. 497, 509, 175 S.W. (2d) 60, 65. We need not repeat what is there stated. Counties have not been delegated authority to regulate traffic over city streets within their boundaries. We are cited to no authority, and our search has revealed none under the instant facts, taking land devoted to public use as a city street out of the police power delegated to cities because owned by a county. State ex rel. Jump v. Louisiana, Bowling Green & Ashley Gravel Road Co., 116 Mo. App. 175, 92 S.W. 153, the only authority cited by the County, is not on this issue."

Section 75.110 RSMo 1949, gives to cities of the second class the power by ordinance to regulate the use of streets. Said section provides in part as follows:

"To establish, open, vacate, alter, widen, extend, grade, improve, repair, construct, pave, repave, reconstruct and maintain, light, clean, oil and sprinkle all streets, avenues, boulevards, sidewalks, alleys, wharves, parks, public grounds and squares, bridges, viaducts, subways, tunnels, sewers and drains; and to regulate the use thereof; * * *."

Section 304.120 RSMo 1949, (referred to in the Mexico case, supra, as "Laws 1943, pages 659 to 661") gives to the City of Springfield specific authority to, by ordinance, regulate parking by the installation of parking meters. Said section provides in part as follows:

"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; * * *."

We are of the opinion that principles of law laid down by the Supreme Court in the Mexico case are controlling on the question at hand and since the City of Springfield has lawful authority by Section 302.120 to regulate parking by the installation of parking meters they may do so in their discretion by ordinance on streets surrounding the city courthouse.

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CONCLUSION

Therefore, it is the opinion of this department that the City of Springfield has the power in the exercise of delegating police power to install parking meters on streets bounding the Greene County Courthouse.

Respectfully submitted,

D. D. GUFFEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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