

CONSTITUTIONAL LAW) Missouri State Highway Commission determination
) of limited access to state highway prevails over
) inconsistent city ordinance.

February 10, 1953



Honorable E. Gary Davidson
State Senator, 15th District
Senate Post Office
Capitol Building
Jefferson City, Missouri

Dear Senator Davidson:

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

"Request is hereby made for your opinion on the following matter:

"Reference is made to Article IV, Section 30, Paragraph (e) and Article IV, Section 29 of the Constitution of the State of Missouri 1945.

"May the State Highway Commission when authorized by law to legally establish and construct a state highway within and through a municipality by condemnation or purchase, acquire and limit the right of access to from or across such state highway within such municipality; and pursuant to such acquisition erect wire barriers along such highway, thoroughfare or right-of-way contrary to an ordinance of said municipality prohibiting the erection of obstructions or barriers along any highway, street or thoroughfare within such municipality and thereby limit and interfere with the free movement of police, fire equipment, emergency services and personnel in the interest of public safety?"

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Section 29, Article IV, Constitution of Missouri, 1945, which you have referred to in your letter of inquiry, reads as follows:

"Highway Commission--Qualifications of Members and Employees--Authority over State Highways.--The department of highways shall be in charge of a highway commission. The number, qualifications, compensation and terms of the members of the commission shall be fixed by law, and not more than one-half of its members shall be of the same political party. The selection and removal of all employees shall be without regard to political affiliation. It shall have authority over and power to locate, relocate, design and maintain all state highways; and authority to construct and reconstruct state highways, subject to limitations and conditions imposed by law as to the manner and means of exercising such authority; and authority to limit access to, from and across state highways where the public interest and safety may require, subject to such limitations and conditions as may be imposed by law."

(Emphasis ours.)

Section 30, Article IV, which you have also referred to in your letter of inquiry, relates to the source of money to be expended under the supervision of the state highway commission and to the purposes for which such money may be expended. The portion of the constitutional provision quoted at length above first became a part of the organic law of this state by virtue of its incorporation in the present constitution. It has already been the subject matter of a case decided by the Supreme Court of Missouri. We direct your attention to State ex rel. State Highway Commission v. James, Circuit Judge, 205 S.W. (2d) 534, 1.c. 537, wherein the court said:

"* * * Section 29 of Article IV provides that limitation of access is a proper

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consideration in the construction of state highways where the public interest and safety may require and, therefore, announces a purpose for which condemnation may be had under the statute. The power to limit access is 'subject to [such] limitations and conditions [as may be] imposed by law.' Existing law, both statutory and constitutional, already limit and condition the taking of any interest in land by providing that just compensation must be ascertained and paid in the manner provided by statute. The general assembly is authorized to impose additional limitations and conditions."

It is apparent from the conclusion reached in the case cited that the constitutional provision is self-enforcing, and that it does confer upon the state highway commission broad powers in determining whether or not access to highways shall be limited.

It might at this point be well to inquire whether the delegation by the state to municipalities of the power to regulate traffic upon their streets amounts to a "limitation and condition imposed by law." We think this pertinent in view of the fact that in many instances city ordinances do have the effect of "laws." However, we believe the proper construction to be placed upon the last provision found in Section 29, Article IV, Constitution of Missouri, 1945, quoted supra, is one that will interpret such proviso to authorize the General Assembly only to prescribe the mode and manner of the constitutional authority to limit access to highways granted the State Highway Commission in the same constitutional provision. Reference to the debates of the Constitutional Convention, which wrote the present organic law, indicates such a purpose was in the minds of the framers of the constitution. Further, in *United States v. Ensign*, 2 Mont. 396, the Supreme Court of the Montana territory had for consideration a somewhat similar constitutional provision. The provision substantially provided that the jurisdiction of certain courts should be as limited by law. The court held that this could not serve to authorize the General Assembly to diminish such jurisdiction but could only serve

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to authorize that body to prescribe the mode and manner in which such jurisdiction might be exercised. From the foregoing we believe that the constitutional provision forming a part of our present organic law should be construed in the same manner.

That such is the proper construction to be placed upon the constitutional provision further appears in Public Water Supply Dist. No. 2 v. State Highway Commission, 244 S.W. (2d) 4, l.c. 6, wherein we find the Supreme Court of Missouri saying:

"The State Highway Commission is likewise a political subdivision of the state with jurisdiction over the 'state-wide connected system' of highways. Mo. R.S. 1949, Sec. 227.020. It is plain beyond question, by the terms of the Constitution, that the State Highway Commission has the dominant, primary and superior dominion over highways: * * *"

The purpose of such grant of power is to promote the free flow of vehicular traffic and to safeguard persons using such highways to the greatest possible extent. Your letter of inquiry does not indicate the particular area through which the right of way has been fenced. However, it seems to us that such fencing might very well be a reasonable exercise of the power granted the state highway commission to limit access to a highway, particularly in a greatly congested area. Such a method of exercising the power might very well be necessitated by factors involving schools, churches or other congregating places from whence pedestrian traffic might encroach upon the highway. In any event it seems that the constitutional grant of power is broad enough to embrace a reasonable method for effectuating the purpose of the grant.

It is, of course, elementary that municipalities are but mere adjuncts of the state to which have been delegated certain governmental functions. Within the sphere of the delegated authority such municipalities may freely exercise that portion of sovereignty as may be necessary to discharge their duties. You have not mentioned the class of the municipality through which the highway referred to in your letter of inquiry runs, but regardless of the class of

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municipality it is generally true that the regulation of traffic is a proper function of municipal concern. We presume that it has been under such delegated police power that the ordinance mentioned in your letter of inquiry has been enacted.

However, in the discharge of municipal functions the same constitutional restrictions and inhibitions are applicable as apply to acts of the General Assembly itself. In the event of a conflict between ordinances enacted by municipalities with the organic law of the state, then such ordinances must fall.

We, therefore, have in the situation presented in your letter of inquiry a conflict between a regulation or determination made by a constitutionally created agency of state government and an ordinance enacted under the duly delegated authority of a municipality. We have been unable to find a case precisely of this nature in the reports of appellate court decisions, viz., the effect of a conflict between such a determination made by a constitutionally created body and an ordinance of a municipality. However, it seems to us that in the circumstances the same weight should be ascribed to such regulation or determination as would be given to a positive constitutional rule of law insofar as resolving the conflict between such regulation or determination and a municipal ordinance. We, therefore, are constrained to reach the conclusion that the regulation or determination made by the Missouri State Highway Commission must prevail, and that the municipal ordinance insofar as it purports to establish a different regulatory provision is void.

CONCLUSION

In the premises we are of the opinion that under the provisions of Section 29, Article IV, Constitution of Missouri, 1945, the Missouri State Highway Commission is empowered, subject to such limitations and conditions as may be imposed by law, to determine that access should be limited in or upon a particular highway; that upon such determination having been made the state highway commission

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may use such reasonable methods as may be necessary to effectuate such limitations of access; and that a municipal ordinance prescribing conflicting regulatory provisions is of no force and effect with respect to such highways.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Will F. Berry, Jr.

Yours very truly,

JOHN M. DALTON
Attorney General

WFB/fh