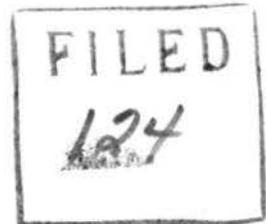


CITY ORDINANCES: Subsections 6 and 7 of Section 79.
CITIES, TOWNS & VILLAGES: 450, RSMo Supp. 1971, do not grant
an unlimited authority for a fourth
class city to enact any ordinance it deems advisable if not in con-
flict with a state statute but does grant authority to enact ordi-
nances and regulations governing matters of the same general kind
and character as those expressly mentioned in Chapter 79, RSMo.

OPINION NO. 124

April 23, 1973

Honorable Al Nilges
Representative, District 126
Room 413, Capitol Building
Jefferson City, Missouri 65101



Dear Representative Nilges:

This is in response to your request for an opinion from this office as follows:

"Is the interpretation of Section 79.450, paragraphs 6 and 7 of the Revised Statutes of the State of Missouri 1971 Supplement that the matter of 4th Class City Ordinances is one of specific allowable areas or does this section allow any ordinances which do not directly conflict with the State Statute.

"The City of St. Clair has been hampered in its attempt to update ordinances by the interpretation of Section 79.450, paragraphs 6 and 7 of the Revised Statutes of the State of Missouri 1971 Supplement."

Section 79.450, RSMo, to which you refer, provides as follows:

"1. The board of aldermen shall enact ordinances to prohibit and suppress houses of prostitution and other disorderly houses and practices, including gambling and gambling houses, and all kinds of public indecencies, and may prohibit the selling or giving of intoxicating liquors to any minor or habitual drunkard.

"2. The board of aldermen shall also enact ordinances to restrain and prohibit riots,

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noises, assaults and batteries, disturbances of the peace, disturbances of religious and other lawful assemblies, indecent shows, exhibitions or concerts in any street, house or place in the city, disorderly assemblies, and to regulate, restrain and prevent the discharge of firearms, and the keeping and discharge of rockets, powder, fireworks or other dangerous combustible materials in the streets or in limits of the city.

"3. The board of aldermen may also regulate and control the construction of buildings, the construction and cleaning of fireplaces, chimneys, stoves and stovepipes, ovens, boilers, kettles, forges or any apparatus used in any building, manufactory or business which may be dangerous in causing or promoting fires, and may provide for the inspection of the same.

"4. The board of alderman may also provide by ordinance limits within which no building shall be constructed except of brick or stone or other incombustible materials, with fire-proof roofs, and impose a penalty for the violation of such ordinance, and may cause buildings commenced, put up or removed into such limits in violation of such ordinance, to be removed or abated.

"5. The board of aldermen may also purchase fire engines, hook and ladder outfits, hose and hose carts, buckets and all other apparatus useful in the extinguishing of fires, and organize fire companies and prescribe rules of duty for the government thereof, with such penalties for the violation thereof as they may deem proper, and not exceeding one hundred dollars and to make all necessary expenditures for the purchase of such fire apparatus and the payment of such fire companies.

"6. The board of aldermen may enact or make all ordinances, rules and regulations necessary to carry out the purposes of this chapter.

"7. The board of aldermen may enact or make all ordinances, rules and regulations,

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not inconsistent with the laws of the state, expedient for maintaining the peace, good government and welfare of the city and its trade and commerce."

You inquire whether paragraph 6 and 7 of the above statute, in regard to the authority of the board of aldermen of a fourth class city to enact city ordinances, is one of specific allowable areas or does it allow any ordinances which do not directly conflict with the state statute.

No specific subject matter for the board of aldermen to consider in the enactment of an ordinance is submitted so our discussion of the powers and authority of such city to enact ordinances has to be upon general principles of law.

Cities have and can exercise only such powers as are conferred by express or implied provisions of law, their charters or statutory grants being a grant and not a limitation of power, subject to strict construction with doubtful powers resolved against the city. City of Springfield v. Clouse, 206 S.W.2d 539 (Mo. banc 1947); Taylor v. Dimmitt, 78 S.W.2d 841 (Mo. 1934).

Since a fourth class municipality has only such powers and authority as is expressly granted by the legislature, the question arises as to the interpretation of subsections 6 and 7 of the above statute. Are they to be considered as a general grant of power and authority to the city following a specific grant of power to grant ordinances governing specific subject matter. The question arises under the above statute whether the legislature intended to grant authority to the city to enact ordinances governing any subject matter that might be deemed advisable unless such ordinance would be in direct conflict with a state statute.

The general rule of statutory construction where powers of a municipal corporation are defined in words of particular and specific meaning followed by general words is stated in 62 C.J.S. Municipal Corporations §121:

"If a charter, statute, or constitutional provision, in defining the powers of a municipal corporation, enumerates certain things which it may do by words of particular and specific meaning, and such enumeration is followed by general words, the general words are not to be taken in their widest sense, but are restricted to things of the same general kind as those enumerated, unless the contrary intent appears.

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The rule of ejusdem generis is only a rule of construction to be used as an aid in ascertaining the intent of the enacting body, however, and it does not apply where the legislative intent is clear from the statute or charter provision itself, the cardinal rule, in determining whether the rule of ejusdem generis should be applied to a catch-all provision in a city charter following specific provisions, being to ascertain the intent of the charter provision."

In McQuillin, Municipal Corporations, Revised Edition 1966, paragraph 10.24 it provides as follows:

"It has been said in some cases that municipal powers granted by a 'general welfare' clause in a charter or statute do not extend or enlarge powers specifically granted, and that such a clause merely permits the municipal authorities to exercise discretion within the scope of powers specifically granted; and it has been said that, as a municipal corporation possesses no powers not derived from its charter, such general terms, as 'full powers of self-government,' and 'all powers of municipal government not prohibited by this charter,' add nothing to the terms of the charter; the charter must still be the measure of authority to sustain an act done by the corporation. However, the trend of the decisions in some states is towards a relaxation of the rule of strict construction of the general welfare clause in a charter. Surely such clause following an enumeration of specific powers, does not confer other powers that do not fall strictly within the customary and usual orbit of municipal activity, and which are not required to be exercised to accomplish the purpose of municipal government.

"The general rule seems to be that where particular powers expressly conferred are followed by a general grant of power, such general grant by intendment may include all powers that are fairly within the term of the grant, and which are essential to the purposes of the municipal corporation, and consistent with the

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particular powers. And it has been held that 'the general powers usually given to municipal corporations are designed to confer other powers than those specifically enumerated' and that 'general powers conferred are to be construed with reference to the purposes of the incorporation.' Otherwise stated, where the exercise of particular powers may be fairly included in and authorized by general powers granted, the rule *expressio unius est exclusio alterius* is not applied to exclude powers that serve the purposes for which municipalities are organized where such powers are consistent with other powers conferred and with limitations imposed by the charter or by statute upon the municipal powers.

"It has been held that where general words follow particular and specific words in a statute granting powers to municipalities the general words must be construed to include only things of the same kind, class or nature as those indicated by the particular and specific words, unless there is something in the statute, or its context, which shows that the doctrine of *eiusdem generis* should not be applied. But where a municipal corporation has been given a certain power by specific provision of a statute, such power cannot be added to by general language found in the same act."

In Lovins v. City of St. Louis, 84 S.W.2d 127 (Mo. banc 1935), the question before the court involved the powers, duties, and authority of the city of St. Louis as compared with that of St. Louis County under the constitutional provision authorizing the city of St. Louis to perform, among other things, "all other functions" in relation to the state in the same manner as if it were a county. The question before the court was whether the phrase "all other functions" should be interpreted as comprising only functions of the same general nature as those specified in connection with the phrase and others of the same nature. In discussing this the court stated, l.c. 130:

"The predominant character and phase of St. Louis as a city in every corporate sense, to which reference was made in a preceding paragraph, is established and embraced only in the scheme set out in sections 20, 21, and

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22 of said constitutional amendment (R. S. 1929, pp. 130-131). Neither grant nor limitation of appeal appears therein. The sole and only section found in the amendment which confers upon St. Louis any rights, powers, or functions as a quasi county or political subdivision of the state is section 23 (R. S. 1929, p. 131), of which the relevant part reads: 'The city, as enlarged, shall be entitled to the same representation in the General Assembly, collect the state revenue and perform all other functions in relation to the State, in the same manner, as if it were a county as in this Constitution defined.' Under the maxim ejusdem generis 'all other functions' must be interpreted as comprising functions of the same general nature as those specific in connection with that phrase, and the intended functioning means normal action in relation to the manner specific and others of the same nature. A county, as a governmental unit composed of the people resident within its prescribed territory, can only function concerning affairs committed to it as a governmental unit. It has nothing to do with the purely corporate or nongovernmental affairs of the city as such and no functions concerning them to perform. The city of St. Louis, in so far as its county functions extend, is coequal in that respect with all other counties in the state but not different therefrom. Constitutionally, while St. Louis in its entirety is of a dual nature, it is in no sense either a super-city proper or a super-county. It is the declared purpose of said section 23 that the charter of the city shall always be in harmony with the Constitution and subject to the laws of the state."

Applying these principles of law, it is our opinion that subsections 6 and 7 of the above statute do not constitute a general grant of power and authority of a fourth class city to enact any and all ordinances it may deem necessary so long as it is not in conflict with a state law, but is a grant of authority for the board of aldermen to enact ordinances and regulations in regard to things of the same general kind concerning matters expressly mentioned in Chapter 79, RSMo, and those necessarily implied in order to enforce those ordinances on matters specifically enumerated.

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CONCLUSION

It is the opinion of this office that subsections 6 and 7 of Section 79.450, RSMo Supp. 1971, do not grant an unlimited authority for a fourth class city to enact any ordinance it deems advisable if not in conflict with a state statute but does grant authority to enact ordinances and regulations governing matters of the same general kind and character as those expressly mentioned in Chapter 79, RSMo.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, prominent initial "J".

JOHN C. DANFORTH
Attorney General