

CITIES, TOWNS AND VILLAGES:  
LIQUOR:  
VILLAGES:

The term "incorporated city"  
as used in Section 311.090,  
RSMo Supp. 1990, includes  
incorporated villages.

May 28, 1991

OPINION NO. 59-91

The Honorable Craig Kilby  
Representative, District 21  
State Capitol Building, Room 105G  
Jefferson City, Missouri 65101

Dear Representative Kilby:

This opinion is in response to your question asking:

Do villages fall within the meaning of  
"incorporated city" as used in Section  
311.090?

Section 311.090, RSMo Supp. 1990, provides in part:

311.090. Sale of liquor by the  
drink, cities, requirements--Sunday sales  
authorized for certain organizations.--1.  
Any person who possesses the qualifications  
required by this chapter, and who meets the  
requirements of and complies with the  
provisions of this chapter, and the  
ordinances, rules and regulations of the  
incorporated city in which such licensee  
proposes to operate his business, may apply  
for and the supervisor of liquor control  
may issue a license to sell intoxicating  
liquor, as in this chapter defined, by the  
drink at retail for consumption on the  
premises described in the application;  
provided, that no license shall be issued  
for the sale of intoxicating liquor, other  
than malt liquor containing alcohol not in  
excess of five percent by weight, and light  
wines containing not in excess of fourteen  
percent of alcohol by weight made  
exclusively from grapes, berries and other  
fruits and vegetables, by the drink at

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retail for consumption on the premises where sold to any person other than a charitable, fraternal, religious, service or veterans' organization which has obtained an exemption from the payment of federal income taxes as provided in section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(7), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the United States Internal Revenue Code of 1954, as amended, in any incorporated city having a population of less than twenty thousand inhabitants, until the sale of such intoxicating liquor, by the drink at retail for consumption on the premises where sold, shall have been authorized by a vote of the majority of the qualified voters of the city. Such authority shall be determined by an election to be held in those cities having a population of less than twenty thousand inhabitants as determined by the last preceding federal decennial census, under the provisions and methods set out in this chapter. No license shall be issued for the sale of intoxicating liquor, other than malt liquor containing alcohol not in excess of five percent by weight, by the drink at retail for consumption on the premises where sold, outside the limits of such incorporated cities unless the licensee is a charitable, fraternal, religious, service or veterans' organization which has obtained an exemption from the payment of federal income taxes as provided in section 501(c)(3), 501(c)(4), 501(c)(5), 501(c)(7), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the United States Internal Revenue Code of 1954, as amended.  
[Emphasis added.]

\* \* \*

Prior to the enactment of House Committee Substitute for House Bills Nos. 85, 103, 380, 421 and 439, Eighty-second General Assembly, First Regular Session (1983), Section 311.090, RSMo, included language defining "city" as "any municipal corporation having a population of five hundred inhabitants or more." The amendment deleting this language removed the

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requirement that a city have a population of five hundred inhabitants or more. See Attorney General Opinion No. 33-90, a copy of which is enclosed.

In two prior opinions from this office, we have examined the meaning of the word "city" in the absence of any special or technical definition. In Attorney General Opinion No. 22, Detjen, April 21, 1953, a copy of which is enclosed, we concluded that the term "incorporated cities" found in Article VI, Section 18(c) of the Constitution of Missouri includes all incorporated cities, towns and villages.

In Attorney General Opinion No. 193, Hickey, July 13, 1962, a copy of which is enclosed, we concluded the word "city" as used in Article VI, Section 19 of the Constitution of Missouri includes towns and villages. Article VI, Section 19 of the Constitution of Missouri at the time of the opinion provided in part:

Any city having more than 10,000 inhabitants may frame and adopt a charter for its own government, consistent with and subject to the Constitution and laws of the state. . . .

In Opinion No. 193, supra, we stated:

There is no indication that the framers of the Constitution of Missouri in the writing of Section 19, Article VI, intended to use the word "city" in any technical sense or to give it a special or unusual meaning. It was intended rather to refer to any municipality "having more than 10,000 inhabitants" . . . .

Id. at 2.

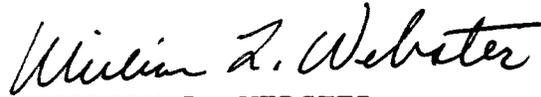
Based on these past opinions, we conclude that the phrase "incorporated city" as used in Section 311.090, RSMo Supp. 1990, includes incorporated villages.

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CONCLUSION

It is the opinion of this office that the term "incorporated city" as used in Section 311.090, RSMo Supp. 1990, includes incorporated villages.

Very truly yours,



WILLIAM L. WEBSTER  
Attorney General

Enclosures: Opinion No. 33-90  
Opinion No. 22, Detjen, April 21, 1953  
Opinion No. 193, Hickey, July 13, 1962