

MUNICIPAL GOVERNMENT IN MISSOURI

With Special Reference to the Metropolitan Areas

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1. GENERAL PRINCIPLES OF THE LEGAL STATUS OF MUNICIPALITIES

It is now established beyond any question that a state may exercise complete control over all forms and powers of local governments within its bounds. No provision of the United States Constitution restrains the state in this control, nor does any other general principle operate to prevent the exercise of absolute authority by the state over cities, towns, counties or other subdivisions. The so-called "Cooley doctrine," once accepted in some parts of the country, has been completely rejected. It is equally well established that the legislature of the state, in absence of restrictions in the state constitution, is in complete control of municipal and other local government. It may establish, regulate or destroy units of local government at will. The powers of cities are entirely derived from the state, either from some constitutional provision, or from legislation. Municipalities possess no inherent powers; such powers as they possess are all delegated, and are therefore to be strictly interpreted. Any protection which a city may claim against the legislature must be found in the state constitution. Most states have placed in their constitutions numerous safeguards of local self-government, prohibiting certain kinds of legislative interference. But in the absence of such guarantees, the local units have no defense against legislative encroachment.¹

In the early days of our national history, legislatures exercised complete control over municipal government, chartering cities by special act, and using such discriminatory methods in dealing with different cities as seemed desirable to the members of the representative bodies. The growth of constitutionalism in the states since that time has produced many limitations on legislative power, and among them, restrictions on the control of cities.

At the present time, the constitutional status varies greatly in this regard, from some instances in which the limitations on

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1. Dillon, J. E., *Law of Municipal Corporations* (1911); McQuillin, E., *Law of Municipal Corporations* (1921).

the legislature are unimportant to the opposite extreme of nearly complete autonomy for municipalities. The various sorts of constitutional treatments which have been used may be indicated thus:

1. Miscellaneous specific restrictions, *e. g.*,
 - a. Complete prohibition of legislative control of certain matters, *e. g.*, taxation for local purposes, enactment of local ordinances.
 - b. Prohibition of special legislation on certain subjects, especially the chartering of cities.
 - c. Prohibition of special legislation on any subject, except under certain conditions, *e. g.*, notice in the area, or a referendum in the area.
 - d. Prohibition of special legislation on any subject when general acts will meet the need.
2. A requirement for the use of a municipal code, or "standard charter" system, in which all cities of the state are under the same regulations.
3. A requirement for the classification of cities, with general regulations applying to all cities in a class; the details of the classification may be found in the constitution, or in the statutes.
4. Permission to use the optional charter system, in which the statutes authorize cities to choose among alternative plans of government.
5. "Legislative" home rule, in which case the legislature is authorized to permit cities to draft their own charters, within limits set forth in the statutes.
6. Constitutional home rule, in which the right to draft charters is conferred on cities by constitutional provision, protected against interference by the legislature.

These methods are applied singly or in combination in the various states, with no two systems identical. The wisdom of all has been vigorously debated, and it can not be said there is general agreement on any point. Perhaps the principle which the greatest number of authorities can accept is that the system in most states is far too complex. Certainly it is agreed that it should be as simple and as clear as possible.

Unfortunately, phraseology in a constitution is not always self-enforcing, nor is it always so clear of intent that no distortion is possible. The result is that the state courts have in many cases permitted legislation which directly contravenes the obvious design of the writers of the constitutional provisions. In this

connection, the courts are influenced by the principle that the legislative power is plenary as to all subjects within state control, except as limited by the state constitution, and hence the benefit of the doubt is in favor of the legislature, when its action is attacked. Consequently, the various methods used to protect municipalities from excessive legislative interference have all been found wanting on occasion in various states.

In the final analysis "the constitution is what the court says it is," and the courts have not infrequently found that restrictions do not restrict.

2. CONSTITUTIONAL BASIS FOR MUNICIPAL GOVERNMENT IN MISSOURI

The situation in Missouri is particularly complex. Of the devices indicated, only the second and fifth are missing, and there is apparently no bar to the fifth. All of the specific restrictions mentioned are included in the Missouri constitution. A general code is apparently forbidden by the requirement of classification. Optional charters are provided by statutes in two classes. Home rule is set forth in the constitution, and there would appear to be no good reason to prevent the legislature from allowing all or any cities the same privilege. Here, then, is an excellent example of the complexity which should be avoided. Experience has demonstrated that complexity of statutory provisions may well destroy simplicity of constitutional phraseology, and when the constitutional items are themselves complicated, the confusion becomes worse confounded as indeed is the case in Missouri.

The constitutional provisions fall naturally into two groups: those relating to municipalities in general, and the home rule sections.

The legislature is required by the constitution of Missouri to classify cities and towns into not more than four classes. Powers of each class are to be defined by general law, applying the same provisions to all cities of the same class. Provision must be made for cities or towns existing under special charters formerly granted, which may choose to come within the classification established by law.² Provision is made, to be implemented by statute, for the consolidation of city and county governments,

2. Mo. Const. (1875) art. IX, §7.

in any county containing a city of more than 100,000 inhabitants.³ Protection of municipalities against unreasonable interference includes prohibition of special legislation on these subjects: regulating the affairs of cities; changing the names of persons or places; authorizing the laying out, opening, altering or maintaining roads, highways, streets or alleys; vacating roads, town plats, streets or alleys; incorporating cities, towns or villages, or changing their charters; creating offices or prescribing the powers and duties of officers in cities; regulating the fees or extending the powers of aldermen; legalizing the unauthorized or invalid acts of any officer of any municipality; or enacting any special legislation when a general law can be made applicable. The question of the applicability of a general law is specifically made a judicial question.⁴ It is further provided that when special legislation is to be passed, notice thereof must have been given by publication in the locality affected, thirty days prior to the introduction into the legislature of the bill, and such notice shall be exhibited in the legislature before passage of such act.⁵ The legislature is forbidden to levy local taxes for local purposes.⁶ Certain restrictions are placed upon municipalities: they are forbidden to subscribe to capital stock of any railroad or any other corporation; or to lend their credit for the benefit of any such association, or in aid of any college or other institution of learning, state or private; fees of no "executive or ministerial" officer shall exceed \$10,000 annually, exclusively of salaries paid to deputies.⁷ Under certain circumstances, no person may hold municipal and state office at the same time, or two municipal offices at the same time.⁸ No city may be released from its share of taxation, nor may taxes be commuted.⁹ The tax rate for municipal purposes is limited on a sliding scale based on both population and assessed valuation, with certain exceptions.¹⁰ Municipal indebtedness is limited to the amount of the annual revenue, except by a two-thirds vote of the residents, and then is limited in terms of the assessed valuation and the population,

3. Mo. Const. (1875) art. IX, §8. No legislative action has been taken under this section.

4. Mo. Const. (1875) art. IV, §53.

5. Mo. Const. (1875) art. IV, §54.

6. Mo. Const. (1875) art. X, §10.

7. Mo. Const. (1875) art. IX, §13.

8. Mo. Const. (1875) art. IX, §18.

9. Mo. Const. (1875) art. X, §9.

10. Mo. Const. (1875) art. X, §11.

with certain exceptions, especially for St. Louis, and for the purchase or construction of public utilities.¹¹

As regards home rule, Missouri may claim some preeminence, for the first home rule provisions in the United States are to be found in the Missouri Constitution of 1875. Missouri extends the privilege to all cities over 100,000 population, which, at present, are St. Louis and Kansas City. There are two home rule provisions in the Missouri constitution. The general provision authorizes any such city to elect a charter commission, which is then to frame a charter and submit it to the voters. If adopted, such charter supplants existing legislation regarding the form and powers of the city.¹² Amendments to the charter may be adopted by a majority of the voters, on proposal by charter commission, or by the legislative authorities of the city.¹³

Special attention was given to the problem of the metropolitan area of St. Louis. It was provided that the city might extend its limits to include outlying districts, and at the same time secede from St. Louis County, and adopt a charter for its own government. The election of a board of freeholders was authorized, which should prepare two documents: a scheme of separation of the city and the county, and a charter for the government of the city. The scheme being approved by the majority of the voters of the whole area, and the charter by the majority of the voters of the enlarged city, "shall become the organic law" of the city and the county, superseding the former charter and all special laws relating to St. Louis County inconsistent therewith.¹⁴ Amendments to the charter may be adopted by the voters of the city on proposal by the municipal legislature, a three-fifths majority of those voting on the proposition being required for adoption. (The home rule principle does not apply to the "Scheme," and the legislature has frequently modified the status of St. Louis County, by general law and in particular.) The existing charter may be replaced by a new chapter by the election of a new board of freeholders, which then is to proceed as indicated above. The new charter may be approved by a majority of those voting on the proposition.¹⁵ The city charter must be

11. Mo. Const. (1875) art. X, §§12, 12a.

12. Mo. Const. (1875) art. IX, §16.

13. Mo. Const. (1875) art. IX, §17.

14. Mo. Const. (1875) art. IX, §20.

15. Mo. Const. (1875) art. IX, §22.

in harmony with the constitution and laws of the state, except that special provision may be made for adjustment of tax rates. The city is exempted from all control by St. Louis County, and itself exercises all the authority of a county within its own borders. It is allowed the same representation as if it were a county.¹⁶ It is specifically declared that "Notwithstanding the provisions of this article, the General Assembly shall have the same power over the city and county of St. Louis that it has over other cities and counties of this State."¹⁷ This section has caused a great deal of dispute, since on the surface it would seem to nullify the previous grant of autonomy.¹⁸

In 1924, in recognition of the problems created by the growth of the suburban area, a new provision was added, setting forth three methods of solving the metropolitan problem. The county might be consolidated with the city in one municipal corporation; the city might return to the county, and then reorganize and extend its boundaries; or the city might annex portions of the county, leaving the remainder. The procedure requires the appointment of a board of freeholders, which is to submit a scheme of reorganization to the voters of the city and of the county. If approved by a majority of those voting thereon in the city and in the county, separately, such scheme would become the "organic law" of the territory affected.¹⁹ In 1930, another amendment was proposed, setting forth still another possible method of meeting the metropolitan problem—a sort of federation scheme for the whole area—but it was defeated by the voters.²⁰ There are certain other specific references to St. Louis in the constitution, especially as regards tax power and borrowing power.²¹

3. STATUTORY PROVISIONS RELATIVE TO MUNICIPALITIES IN GENERAL

As already indicated, the legislature of Missouri has created a highly confused mass of legislation on the subject of municipal

16. Mo. Const. (1875) art. IX, §23.

17. Mo. Const. (1875) art. IX, §25.

18. See *infra*, pp. 414 et seq.

19. Mo. Const. (1875) art. IX, §26.

20. Mo. Laws of 1931, 387; see also "A True Copy of Proposed Amendment to the Constitution of Missouri to be voted on November 4, 1930; Proposition No. 5."

21. Mo. Const. (1875) art. X, §§11, 12.

government. In fact the constitutional requirements have been stretched to the vanishing point, with regard to the classification provision. Under color of conformity, the legislature has practically made the whole requirement of no effect.

Acting under the constitutional mandate, the legislature has set up a classification of municipalities. All cities of 100,000 and over are first class.²² Cities of more than 75,000 and less than 150,000 may elect to become first class.²³ The process prescribed involves passage of an ordinance submitting the question to the voters, at a special election, and if the majority voting at such election approves, then the city will be incorporated under the laws affecting first class cities.²⁴ All cities of 30,000 and less than 100,000 population are second class cities.²⁵ Cities of more than 27,500 and less than 75,000 population may elect to become second class.²⁶ Cities and towns of 3,000 and less than 30,000 population are third class cities.²⁷ Cities and towns of 500 and less than 3,000 population are fourth class cities, and all towns previously chartered under special laws, having less than 500 population may elect to be fourth class cities.²⁸ Any village having more than 200 inhabitants may by majority vote of the qualified electors therein elect to become a city of the fourth class. All other towns "not now incorporated" containing less than 500 inhabitants are declared to be villages,²⁹ thus in effect creating a fifth class.

But this is not the end of evasion of the constitution. There is a group of regulations applying to all cities, towns, and villages,³⁰ and in addition to this general classification there have been set up a number of special classifications. There is a group of regulations applying to all cities, towns and villages of 30,000 and less,³¹ another group applicable to cities of 2,000 to 30,000,³² another affecting all over 100,000,³³ another for all between

22. §6212. This and succeeding references are to R. S. Mo. (1939).

23. §6223.

24. §6224.

25. §6213.

26. §6603.

27. §6214.

28. §6215.

29. §6216.

30. Art. 11, §7307 et seq.

31. Art. 16, §7530 et seq.

32. §7554.

33. Art. 22, §7574 et seq.

50,000 and 250,000³⁴ and others too numerous to mention.³⁵ These laws concern a wide variety of subjects, conferring various powers, and applying numerous restrictions. There have also been created certain special classifications for special purposes, as for example a group of regulations affecting cities of 600,000 inhabitants and over, with regard to the deposit of funds,³⁶ and another group affecting construction of sewer systems in certain cities.³⁷

When this process of elaboration of the classification system was in its early stages, the Missouri Supreme Court held such action to be unconstitutional.³⁸ An act authorizing all cities of 300,000 inhabitants or more to exclude "any business avocation" from certain boulevards was declared to violate the requirement that there should be not more than four classes.³⁹ In later cases, however, this ruling was overturned, and such special classifications have been upheld, even when the classification in question contained only one city.⁴⁰ The result is that in effect the constitutional protection against special legislation is of little real significance, and the classification system has become far more complicated than was contemplated.

It is clearly established that the special constitutional status of St. Louis and Kansas City excludes these two cities from the general system of classification, and that they are not affected by legislation for first class cities.⁴¹ The special classifications, however, do apply to these two cities, except that the legislature may not act on a matter distinctly of "local" concern, and indeed it is held that because the constitution makes them special cases, the legislature may act upon them directly and by name, in elaboration of the constitutional status.⁴² The result is that a

34. Art. 19, §7556 et seq.

35. §§7530-7688.

36. §7757.

37. §7525.

38. *St. Louis v. Dorr* (1898) 145 Mo. 466, 46 S. W. 976.

39. Mo. Const. (1875) art. IX, §7.

40. *State ex rel. McCaffery v. Mason* (1900) 155 Mo. 486, 55 S. W. 636.

41. *City of St. Louis v. Bircher* (1879) 7 Mo. App. 169, aff'd (1882) 76 Mo. 431; *Kansas City v. Stegmiller* (1899) 151 Mo. 189, 52 S. W. 723; *State ex rel. McCaffery v. Mason* (1899) 155 Mo. 486, 55 S. W. 636; *State ex rel. Carpenter v. St. Louis* (1928) 318 Mo. 870, 2 S. W. (2d) 713.

42. *State ex rel. Carpenter v. St. Louis* (1928) 318 Mo. 870, 2 S. W. (2d) 713; *State ex rel. Zoo Board v. St. Louis* (1928) 318 Mo. 910, 1 S. W. (2d) 1021.

great deal of special legislation affecting the two great cities is now in effect.⁴³

Forms of municipal government, and functions of officials, have been provided for the four classes of cities, and for towns and villages.⁴⁴ First class cities, of which St. Joseph is the only example, are provided with a standard form of municipal government, while second class cities may choose between two forms, and third class cities may choose among three types. In fourth class cities, and in towns and villages, there is no choice, but the form varies slightly in the villages, as between the larger and the smaller communities.

The grant of powers, in most cases, is fairly liberal, including a detailed statement, and a general grant as well. As might be expected, greater attention is paid to the powers of the larger cities. The courts of Missouri have held quite closely to Dillon's Rule of interpretation of powers of cities, placing the burden on the city to justify the exercise of power.⁴⁵ With regard to one subject, the Missouri courts have held that no implied powers exist. The legislature has provided that occupations or vocations may be taxed by a city only when specifically mentioned in the delegation of power.⁴⁶ The supreme court has held that the doctrine of *expressio unius est exclusio alterius* holds, in spite of any general or supplementary grant of power.⁴⁷ When such power has been granted, by specific mention, a later general act will not repeal such grant, even if the act contains a "general repealer" clause. Express delegation can be repealed only by specific mention.

It appears, therefore, that the legislature, with the approval of the courts, has created a situation quite different from that which observation of the constitution would suggest. Instead of being protected from special legislation by the constitution, the cities are subject to continual intervention by the legislature, under color of the classification. Indeed, the guarantees are of so little value that the courts are no longer burdened with the task of administering them.

43. See *infra* pp. 420 et seq.

44. R. S. Mo. (1939) §§6223-7242.

45. See *supra*, p. 405. Municipal powers are limited by the common law as well as by statute.

46. R. S. Mo. (1939) §7440.

47. *Ex parte Siemens v. Shreeve* (1927) 317 Mo. 736, 296 S. W. 415. *Ex parte Keane v. Strodtman* (1929) 323 Mo. 161, 18 S. W. (2d) 896.

4. HOME RULE IN PRACTICE

Theoretically, in examining the practice of home rule in any given circumstances, it should be necessary only to read the constitutional grant of power, and then turn to the charters adopted thereunder. The presumption is, or should be, that the legislature has nothing to do with the municipal government of home rule cities. The cities are in effect granted the power of legislation, as affecting themselves, which formerly rested with the state legislature. A home rule charter, it is agreed, is a statute, ranking with other statutes, but possessing the distinguishing characteristic that it cannot be repealed by the legislature. It was enacted by the city in its own legislative capacity, and can be repealed only by the authority which originally gave it force. (This idea that legislative power can be exercised by other agencies than the regular legislative body is also expressed in the initiative and referendum, as well as by the rule-making power of administrative or judicial agencies.)

In no case, however, is the situation so simple, and in this state such a presumption would lead to definitely erroneous conclusions. In fact, it might almost be said that the presumption must be reversed, to give a clear statement of the actual practice in Missouri. Here it is necessary to read endless pages of statutes and equally extensive decisions of the courts before the ultimate situation is revealed, and then it lacks a great deal of the clarity and simplicity so much to be desired. The fact is that home rule cities in Missouri are not free from legislative control. They are subject to such constant intervention by legislation that it might be said they are less free than are those cities not blessed with the home rule privilege. Indeed, as will shortly appear, the home rule status of St. Louis has been used by the courts to justify legislation for the city specially, and by *name!*

In order, therefore, to understand the practice of home rule in Missouri, it is necessary to examine the judicial application of the constitutional guarantees and the legislation which has been approved by the courts as affecting the home rule cities, in addition to the charters themselves, which should be the controlling factors. In many respects, especially in St. Louis, the statutes are more important than the charter.

It is plain that the legal status of St. Louis rests on a different

constitutional basis from that of Kansas City. Whereas Kansas City's charter was adopted under the general provisions of section 16 of article IX, applying to all cities of over 100,000 population, the charter of St. Louis was adopted under the constitutional authority of section 20, as is evidenced by the procedure, and the act of separation from the county which is not authorized by section 16.⁴⁹

This question first arose on a dispute over methods of amending the charter, there being provided in section 17 a method for amending charters adopted under section 16; the court said:

* * * Section 17 limits its application to charters "framed and adopted under the authority of Section 16." * * * As the present charter was not framed and adopted under the authority of Section 16 it cannot be amended by complying with the provisions of Section 17.

We thus agree * * * that the city of St. Louis derives its corporate existence and charter powers exclusively under Sections 20 to 23, both inclusive, of Article IX of the Constitution, and the present charter cannot be amended under Section 17 of Article IX of the Constitution.⁵⁰

But this is the whole extent of the distinction, and on other questions of constitutional status, the two cities are treated alike; decisions regarding one being consistently cited as regards the other. The declaration in section 25 that the "legislature shall have the same power over the city and county of St. Louis that it has over other cities and counties of this state," by naming St. Louis, instead of referring to all home rule cities, seems to create a special situation which would give the legislature greater control over St. Louis than over Kansas City. While in practice, this seems to be the case, the courts have not yet declared the distinction.

Following the general rule accepted in the courts of other states, the Missouri courts have attempted to distinguish between "local" matters, and "general" or "state" concerns. Such distinction obviously presents difficulty. The Missouri Supreme

49. *St. Louis v. Sternberg* (1879) 69 Mo. 289; *Kansas City v. Stegmiller* (1899) 151 Mo. 189, 52 S. W. 723; *State ex rel. Halsey v. Clayton* (1910) 226 Mo. 292, 126 S. W. 506; *Lefman v. Schuler* (1927) 317 Mo. 671, 296 S. W. 808; *State ex rel. Hussman v. St. Louis* (1928) 319 Mo. 497, 5 S. W. (2d) 1080.

50. *State ex rel. Hussman v. City of St. Louis* (1928) 319 Mo. 497, 506, 5 S. W. (2d) 1080.

Court has held that the reserved power of the legislature extends to all matters of "state" or "public" interest, and that nothing in the city charter can supersede that authority.⁵¹ But this does not mean that the legislature can amend the charter of the city, with regard to "local" matters.⁵²

The United States Supreme Court has declared that the reserved control existing in the general assembly under this section does not affect the fact that under sections 20 and 21 the charter of St. Louis is an "organic act."⁵³

The "organic" nature of the charter has been further expounded in various cases in which it is held that the powers conferred upon the municipality by the Constitution of 1875 and later amendments are valid and binding on all matters within their scope.⁵⁴

The charter so conferred and adopted (even though drawn up by the city itself) constitutes a direct delegation to the municipality of the legislative power of the state, with regard to matters of "local" concern.⁵⁵ And such delegation is not in violation of the maxim that legislative power cannot be delegated, since this is an original grant, an act of sovereignty, and not a secondary delegation by one legislative authority to another.⁵⁶

The powers thus conferred are a part of the police power of the state,⁵⁷ and thus the city acts as the direct agent of the state

51. *Ewing v. Hoblitzelle* (1885) 85 Mo. 64, rev'g 15 Mo. App. 441; *State ex rel. Zoo Board v. St. Louis* (1928) 318 Mo. 910, 1 S. W. (2d) 1021.

52. *City of St. Louis v. Dorr* (1898) 145 Mo. 466, 46 S. W. 976; *Haussler Inv. Co. v. Bates* (1924) 306 Mo. 392, 267 S. W. 632.

53. *City of St. Louis v. Western Union Tel. Co.* (1892) 149 U. S. 465; *Withnell v. Ruecking Const. Co.* (1919) 249 U. S. 63.

54. *Kansas City v. Marsh Oil Co.* (1897) 140 Mo. 458, 41 S. W. 943; *Grand Ave. Ry. Co. v. Citizens' Ry. Co.* (1889) 148 Mo. 665, 50 S. W. 305; *City of St. Louis v. Liessing* (1905) 190 Mo. 464, 89 S. W. 611; *Stanton v. Thompson* (1910) 234 Mo. 7, 136 S. W. 698; *State ex rel. Graham v. Seehorn* (1912) 246 Mo. 541, 151 S. W. 716; *McGhee v. Walsh* (1913) 249 Mo. 266, 155 S. W. 445; *Komen v. St. Louis* (1926) 316 Mo. 9, 289 S. W. 838; *State ex rel. Kansas City v. Lucas* (1927) 317 Mo. 255, 296 S. W. 781.

55. *Ex parte Smith* (1910) 231 Mo. 111, 132 S. W. 607; *City of St. Louis v. Nash* (1924) 260 S. W. 985.

56. *State ex rel. Crow v. Lindell Ry. Co.* (1899) 151 Mo. 162, 52 S. W. 248; *City of St. Louis v. Fisher* (1902) 167 Mo. 654, 67 S. W. 872; *Meier v. St. Louis* (1903) 180 Mo. 391, 79 S. W. 955; *Sluder v. St. Louis Transit Co.* (1905) 189 Mo. 107, 88 S. W. 648; *Jennings Heights Land & Impr. Co. v. St. Louis* (1914) 257 Mo. 291, 165 S. W. 741.

57. *State ex inf. Barker v. Merchants' Exchange* (1916) 269 Mo. 346, 190 S. W. 903.

in their exercise. No charter will be held to violate the constitution of the state, if any other rational interpretation can be placed upon it.⁵⁸ In upholding a Sunday closing ordinance, the court said:

* * * the implication of the city's power arising out of the grant of its corporate existence by the State is sufficiently evident to authorize the enactment and enforcement of the ordinance. To hold otherwise would be to deprive the city as an entity and a recognized subdivision of the State of one of the powers necessary to perform its functions. Put more strongly, the exercise of the police power by a city * * * is one of the municipal functions necessarily and inseparably incident to its existence as a corporation.⁵⁹

In a Kansas City case,⁶⁰ the court said:

The charter * * * being a law for the government of the municipality, it is binding upon all courts, and it violates no principle of our government to say that the courts, when called upon, must enforce these municipal laws unless they conflict with the Constitution, and are not in harmony with the Constitution and laws, and, as already said, mere differences in details do not render such laws inharmonious. So long as Kansas City does not invade the province of general legislation, or attempt to change the policy of the state as declared in her laws for the people at large, it will not be held to be out of harmony with such laws, notwithstanding the provisions of the special charter may be different from the general statutes prescribed for the government of other cities.

This doctrine was cited with approval in later cases involving St. Louis.⁶¹

In the interpretation of the city's powers, the courts of Missouri have clearly accepted Dillon's Rule that the powers of a municipal corporation do not exist unless expressly conferred or necessarily implied.⁶² It would seem, therefore, that section 35 of article I of the St. Louis Charter is of little or no force.⁶³ Yet

58. *Pitman v. Drabelle* (1916) 267 Mo. 78, 183 S. W. 1055.

59. *Komen v. St. Louis* (1926) 316 Mo. 9, 14, 289 S. W. 838.

60. *Kansas City v. Marsh Oil Co.* (1897) 140 Mo. 458, 471-472, 41 S. W. 948.

61. *City of St. Louis v. DeLassus* (1907) 205 Mo. 578, 104 S. W. 12.

62. *City of St. Louis v. Atlantic Quarry & Const. Co.* (1912) 244 Mo. 479, 148 S. W. 948.

63. The city shall have power "to exercise all powers granted or not prohibited to it by law, or which it would be competent for this charter to enumerate."

in some instances, a more liberal attitude is shown, when, for example, it is held that the presumption is always in favor of the validity of an ordinance in the exercise of the police power,⁶⁴ and when it is said by the court that "The authority of cities to pass ordinances for its (*sic*) government is legislative in character, and is derived from the common law, established by long practice in local self-government; it is not a delegation from the law-making body of the State,"⁶⁵ thus suggesting the doctrine of powers inherent in the nature of a municipal corporation. This doctrine, however, was later vigorously denied.⁶⁶

The charter, of course, must always be in harmony with the constitution and laws of the state,⁶⁷ and when the charter or any ordinance is or becomes in conflict with prior or subsequent statutes on state policy, the action of the city must give way before the superior authority.⁶⁸ With regard to "local" or "municipal" matters, a home rule charter supersedes a statute.⁶⁹ In all such cases, the distinction between "state" or "governmental" matters on the one hand, and "local" or "municipal" or "corporate" matters on the other hand, is determinative. In any case, rights acquired, or actions taken under a charter are not invalidated by a later statute, provided, of course, that they were not *ultra vires ab initio*.⁷⁰

With regard to the "reserved" powers of the legislature, there seems to be some confusion. A long line of cases holds that such power can be delegated to municipalities only by express grant.⁷¹

64. *Bellerive Inv. Co. v. Kansas City* (1926) 321 Mo. 969, 13 S. W. (2d) 628; *Thompson v. St. Louis-S. F. Ry. Co.* (1934) 334 Mo. 958, 69 S. W. (2d) 936.

65. *Haeussler Inv. Co. v. Bates* (1924) 306 Mo. 392, 410, 267 S. W. 632; *Komen v. St. Louis* (1926) 316 Mo. 9, 289 S. W. 838.

66. *Kansas City v. J. I. Case Threshing Mach. Co.* (1935) 337 Mo. 913, 87 S. W. (2d) 195.

67. *Ewing v. Hoblitzelle* (1884) 85 Mo. 64; State ex rel. *Crow v. Lindell Ry. Co.* (1899) 151 Mo. 162, 52 S. W. 248; State ex rel. *Goodnow v. Police Commissioners* (1902) 184 Mo. 109, 71 S. W. 215; State ex rel. *Garner v. Missouri & K. Tel. Co.* (1905) 189 Mo. 83, 88 S. W. 41; State ex rel. *McNamee v. Stobie* (1906) 194 Mo. 14, 92 S. W. 191.

68. State ex rel. *McNamee v. Stobie* (1906) 194 Mo. 14, 92 S. W. 191; *Badgley v. St. Louis* (1898) 149 Mo. 122, 50 S. W. 817; *City of St. Louis v. Meyer* (1904) 185 Mo. 583, 84 S. W. 914.

69. *McGhee v. Walsh* (1913) 249 Mo. 266, 155 S. W. 445.

70. State ex rel. *City of St. Louis v. Missouri Pac. Ry.* (1914) 262 Mo. 720, 174 S. W. 73.

71. State ex rel. *Garner v. Missouri & K. Tel. Co.* (1905) 189 Mo. 83, 88 S. W. 41; *City of St. Louis v. Bell Tel. Co.* (1888) 96 Mo. 623, 10 S. W. 197; *City of St. Louis v. St. Louis Transfer Co.* (1914) 256 Mo. 476, 165

The latest declaration, however, seems to oppose this ruling, in speaking of the powers of St. Louis:

The term "city government" is thus interpreted to mean the government framework and functions of which are set forth in the charter. Thus the independence of the city from legislative control is limited to strictly municipal matters.

That broad statement, however, may be qualified. The city's charter powers are not limited to its mere corporate functions. Between that narrow field and territory occupied by general legislation is ground upon which the city under its charter powers may venture if it sees fit, but not contrary to general law, even though its action is only local in its effect.⁷²

No further elaboration of this doctrine can be found, and indeed it is *obiter dictum* in the case.

In one case, it was held that the powers of the city of St. Louis are limited by the common law, as well as by statutory action.⁷³ The constitution requires that the charter shall be "in harmony with and subject to the Constitution and laws,"⁷⁴ and the courts held that the "laws" included the common law, at least as regards rights in real property. "A state legislature has inherent power to change the (common) law in this regard, as in all others, when the change does not infringe some Constitutional rule of property; but the city has no power to do so unless the legislature delegates it."⁷⁵

The principal consideration in any home rule city is the charter and the form and practice of government instituted thereby. Home rule merely transfers from the legislature to the people of the community the power to charter the city and to define its powers. Acting under the provisions of the constitution, the two great cities of Missouri have adopted charters for their own government. It may be said that there is no general dissatis-

S. W. 1077; *St. Louis v. Bell Place Realty Co.* (1914) 259 Mo. 126, 168 S. W. 721; *State ex rel. Goodnow v. Police Commissioners* (1902) 184 Mo. 109, 71 S. W. 215; *City of St. Louis v. Public Serv. Comm.* (1918) 276 Mo. 509, 207 S. W. 799.

72. *State ex rel. Carpenter v. St. Louis* (1928) 318 Mo. 870, 892, 2 S. W. 718.

73. *Carpenter v. Reliance Realty Co.* (1903) 103 Mo. App. 480, 77 S. W. 1004.

74. Mo. Const. (1875) art. IX, §23.

75. *Carpenter v. Reliance Realty Co.* (1903) 103 Mo. App. 480, 493, 77 S. W. 1004.

faction with the form of the municipal government of St. Louis, which is fairly typical of the so-called "strong mayor" type. Likewise, there is no serious general objection to the form of government in Kansas City, which is that commonly known as the "manager" or "council-manager" type, and the difficulties in which the city has found itself arise from maladministration, not from defects in the plan. Since the great scandals of recent years, Kansas City has undergone a considerable reform, with consequent general improvement in the administration of civic affairs.

An attempt to unravel the maze of statutory provisions affecting the great cities involves an enormous task. As indicated earlier,⁷⁶ the practical result of a long series of legislative enactments has been to create a situation which seems quite contrary to the constitutional intent. There can be no objection to any incidental effect on the cities of any general legislation affecting matters of concern to the state at large. But when legislation for municipalities is applied to home rule cities, there is, to say the least, a question of its legitimacy, for the whole purpose of home rule is to free the cities from legislative control. And when the legislature establishes a condition or requirement affecting the two cities only, or one of them only, it is obvious that the intent of the prohibition against special legislation is violated, as is also the requirement that there shall be not more than four classes. Legislation of this sort falls generally into three phases: One affecting St. Louis as a county, one applying to St. Louis by name, and various special classifications which sometimes include both cities, sometimes one only.

The constitutional provision for separation of St. Louis from St. Louis County required that the city take over all county property and assume all county debt, that the city should have the same representation in the legislature as if it were a county, and that it should perform the functions of a county.⁷⁷ These provisions were given effect in the "Scheme" of separation adopted in 1876.⁷⁸ Section 5 of the Scheme provides for the election of sheriff, coroner and public administrator for the city, section 9 and 10 transfer county property and county debt to the

76. See p. 410, *supra*.

77. Mo. Const. (1875) art. IX, §23.

78. R. S. Mo. (1939) pp. 3973-3984.

city, section 24 confers on the municipal assembly the former powers of the county court in the city area, and various other sections apply the principle further.

The "county" aspect of the enlarged city was recognized in the charter in the provision that the city collector shall perform the duties formerly required of the county collector.⁷⁹ The statutes recognize this "county" status in no uncertain terms. All acts placing any duty on a county court are applicable to the municipal assembly of St. Louis.⁸⁰ The same is true of other officers of a county, their functions being required of the corresponding city officials.⁸¹ The city register is made the counterpart of the county clerk.⁸² Under chapter 100, Political Subdivisions, it is declared: "This State is divided into one hundred and fourteen counties and one city."⁸³ This would seem to indicate that the city is regarded as a "political subdivision" but not a county. But at another place it is declared: "whenever the word 'county' is used in any law, general in its character to the whole State, the same shall be construed to include the city of St. Louis, unless such construction be inconsistent with the evident intent of such laws, or of some law specifically applicable to such city."⁸⁴ The separation of the city from the county did not relieve the city from all statutes affecting counties; only from those especially applied to St. Louis County, and such as are inapplicable. Such statutes as are not inconsistent with the altered status remain in force until repealed.⁸⁵

It will be noted that none of the passages cited expressly declares the city to be a county. The question may be purely academic, but the courts have dealt with it at considerable length, with the general result that it is held not to be a county in the full legal sense, but in practical effect it is.⁸⁶

The result is that the city of St. Louis is subject to the general statutes relative to functions of counties, and has essentially the

79. Charter (1876) art. XV, §§19, 20.

80. R. S. Mo. (1939) §15744.

81. R. S. Mo. (1939) §15745.

82. R. S. Mo. (1939) §15746.

83. R. S. Mo. (1939) §13548.

84. R. S. Mo. (1939) §655.

85. State ex rel. Burden v. Walsh (1879) 69 Mo. 408; Brown v. Marshall (1912) 241 Mo. 707, 145 S. W. 810.

86. Northcutt v. Eager (1896) 132 Mo. 265, 33 S. W. 1125; Steffen v. St. Louis (1896) 135 Mo. 44, 36 S. W. 31; Straub v. St. Louis (1903) 175 Mo. 413, 75 S. W. 100.

full complement of officials of a county. It is clear, however, that the municipal corporation and the "county," although they occupy the same area, are distinct, and that the city government has no control over "county" functions.⁸⁷ The city has no control of the finances of the "county" officials, although the expenses of the "county" are borne from the city treasury.

In applying the principles stated above, the court has held that the treasurer of the city of St. Louis is a "county" officer, and that the charter provision authorizing the mayor to appoint such officer is void.⁸⁸ The legislature, since this decision, has made provision for the "commissioning" of the treasurer by the mayor, and for the mayor to fill unexpired terms by appointment.⁸⁹ The collector is held to be a county officer—he must be elected in accordance with the statutes.⁹⁰

It should be noted that the situation of Kansas City is not completely parallel, since it has not been removed from Jackson County. But both St. Louis and Kansas City are in practice affected by the special classes of counties created by statute, for particular purposes,⁹¹ and Jackson County is dealt with as a special case.⁹²

The city of St. Louis as a "county" is dealt with by name in some cases. The statutes vary from those which define the powers, duties, and compensation of the sheriff of the city of St. Louis⁹³ to those which provide for the establishment and future control of Tower Grove Park.⁹⁴

Of the provisions applying to both the great cities, the most

87. *State ex rel. Jones v. Mallinckrodt Chemical Works* (1913) 249 Mo. 702, 156 S. W. 967; *State ex inf. Barker v. Koeln* (1917) 270 Mo. 174, 192 S. W. 748.

88. *State ex inf. McKittrick v. Dwyer* (1939) 343 Mo. 973, 124 S. W. (2d) 1173.

89. R. S. Mo. (1939) §§7781-7785.

90. *State ex inf. Barker v. Koeln* (1917) 270 Mo. 174, 192 S. W. 748.

91. R. S. Mo. (1939) §§11702-11744, 11851, etc.

92. R. S. Mo. (1939) §§15660-15664.

93. R. S. Mo. (1939) §§15665-15681.

94. R. S. Mo. (1939) §§15714-15740. For examples of other statutes, see R. S. Mo. (1939) §§15682, 15683 (coroner of city specifically recognized); §15684 (functions of a county court relative to inquests required of the mayor); §§15685-15699 (form of indemnifying bonds which may be required in some cases specifically set forth for St. Louis); §§15700-15704 (St. Louis required to establish a social evil hospital); §15741 (St. Louis Chamber of Commerce given authority to appoint inspectors of flour and establish standard grades); §15742 (city and St. Louis County authorized jointly to establish a morgue).

general are those declared to apply to all cities, towns and villages.⁹⁵ There are numerous particulars involved in this portion of the statutes, and it is not clear that all of them apply to the great cities. In view of the distinction made by the court between "municipal" affairs and those of "general" concern, it might be assumed that some of them do not apply. In some instances, however, it is established that they do apply. For instance the prohibition on requiring peddling licenses of farmers selling their own produce on city streets,⁹⁶ applies to St. Louis.⁹⁷ A somewhat elaborate definition of procedure in assessment of damages arising from change of grade of streets⁹⁸ is held to apply.⁹⁹

The next most general set of provisions establishes the zoning power in all cities, towns and villages, except in counties having no more than 15,000 population.¹⁰⁰ This grant of power affects both Kansas City and St. Louis.¹⁰¹

There are numerous miscellaneous provisions, such as that denying power to cities to tax occupations not specifically named as taxable in the charter or statute.¹⁰² This provision applies to home rule cities.¹⁰³ This prohibition, and the application of it by the courts, results in exhaustive lists in both charters of occupations declared to be taxable.¹⁰⁴

There is an extensive group of provisions applying to cities of more than 100,000 inhabitants.¹⁰⁵ Statutes within this classi-

95. R. S. Mo. (1939) §§7307-7411.

96. R. S. Mo. (1939) §7330.

97. *City of St. Louis v. Meyer* (1904) 185 Mo. 583, 84 S. W. 914; *City of St. Louis v. Bernard* (1913) 249 Mo. 51, 155 S. W. 394.

98. R. S. Mo. (1939) §7373.

99. *City of St. Louis v. Lang* (1895) 131 Mo. 412, 33 S. W. 54; *Markowitz v. Kansas City* (1894) 125 Mo. 485, 28 S. W. 642.

100. R. S. Mo. (1939) §§7412-7423. The act authorizes formation of zoning districts, establishment of zoning commissions and boards of adjustment.

101. *Bellerive Investment Co. v. Kansas City* (1929) 321 Mo. 969, 13 S. W. (2d) 628; *Wippler v. Hohn* (1937) 341 Mo. 780, 110 S. W. (2d) 409.

102. R. S. Mo. (1939) §7440.

103. *Keane v. Strodman* (1929) 323 Mo. 161, 18 S. W. (2d) 896; *Kansas City v. J. I. Case Threshing Mach. Co.* (1935) 337 Mo. 913, 87 S. W. (2d) 195.

104. For other provisions, see R. S. Mo. (1939) §7427 (authorizing cities over 5,000 population to appoint women members of the police force. It is assumed that the provision applies in St. Louis and Kansas City, in view of the general attitude toward police matters. See *infra*, p. 426); §§7460-7467 (requiring licensing of plumbers in cities over 15,000 population).

105. R. S. Mo. (1939) §§7574-7643.

fications vary from one authorizing such cities to acquire bridges, tunnels and approaches,¹⁰⁶ to one defining the jurisdiction of justices of the peace.¹⁰⁷ One of the most controversial of all the provisions affecting both cities is that authorizing maintenance of public libraries in cities, villages and townships.¹⁰⁸ Certain of the provisions are made applicable to cities over 300,000 inhabitants. Establishment of a special library tax, by a referendum, the proceeds of which then must be paid from the city treasury to the library board, was the basis of objection to the statute. This provision was held valid as applied to St. Louis.¹⁰⁹ The Board of Estimate and Apportionment refused to sanction the levying and collection of the tax, and mandamus was requested. In granting the petition, the court declared, *inter alia*, that libraries are educational institutions, and as such subject to control by the legislature, the home rule charter to the contrary notwithstanding.¹¹⁰

Of the special classifications applying to St. Louis alone, one applies to "all cities over 600,000 population, and to all cities not within a county, but constituting a political subdivision and a city in its corporate capacity."¹¹¹ On this basis, St. Louis is

106. R. S. Mo. (1939) §7574. This section was applied to both great cities. *Haeussler v. St. Louis* (1907) 205 Mo. 656, 103 S. W. 1034; *Roy v. Kansas City* (1920) 204 Mo. App. 332, 224 S. W. 132.

107. R. S. Mo. (1939) §7588. For further examples, see R. S. Mo. (1939) §§7575-7576 (emission of "dense" smoke within any city a misdemeanor, and cities authorized to enact ordinances to this end); §§7577-7584 (power to borrow money under certain circumstances conferred); §§7585-7587 (cities required to allow 24 days' vacation with pay to police officers); §§7850-7852 (cities of more than 75,000 population authorized to issue bonds for acquiring public utilities); §§7720-7745 (cities over 300,000 shall establish public markets; may regulate streetcar gates; office of license collector established; duties of recorder of deeds specified). Statutory application of the general home rule provision occupies a considerable portion of article 22, chapter 38. These sections in practice apply only to Kansas City, but in form would apply to both. Article 25 defines when others may be made defendants jointly with the city, in cities of more than 150,000 population (§7687).

108. R. S. Mo. (1939) §§7720-7745.

109. *State ex rel. Carpenter v. St. Louis* (1928) 318 Mo. 870, 2 S. W. (2d) 713.

110. See also *State ex rel. Zoo Board v. City of St. Louis* (1928) 318 Mo. 910, 1 S. W. (2d) 1021, where a similar decision was rendered regarding the provision for zoological parks in cities of more than 400,000, which affects only St. Louis (R. S. Mo. (1939) §§15365-15372); and *State ex rel. Carpenter v. St. Louis* (1928) 318 Mo. 871, 2 S. W. (2d) 713, which upheld, on the same basis, the provision for art museums in cities over 400,000 (R. S. Mo. (1939) §§15705-15713).

111. R. S. Mo. (1939) §§7781-7785.

given a housing authority,¹¹² has its power of choosing depositories restricted and regulated,¹¹³ and is authorized to establish a municipal rapid transit system.¹¹⁴ Numerous statutes are applicable also under the classification of cities over 500,000 in population, as, for example, state control of police is provided for St. Louis.¹¹⁵ The court upheld these provisions on the ground that police administration is distinctly a matter of "general" concern, not "municipal" only, and hence was within the power of the legislature.¹¹⁶ Other statutes in this group cover widely varied fields.¹¹⁷

Of statutes affecting Kansas City alone, the most significant is that providing state control of police in cities between 200,000 and 500,000 population.¹¹⁸ An earlier bill had been declared void on the ground of illegal delegation of power.¹¹⁹ The provisions of the present statute are essentially the same as the St. Louis police bill.

In cities of more than 150,000 and less than 500,000, the process of condemnation is regulated.¹²⁰ Authority to issue tax anticipation notes is conferred on cities of 200,000 to 600,000 inhabitants.¹²¹ Cities of 200,000 to 400,000 shall register all private detective agencies.¹²² Certain regulations applying to Jackson county affect Kansas City incidentally.¹²³ The organization and functions of the Kansas City school district are regulated under a classification applying to all cities between 75,000 and 500,000

112. R. S. Mo. (1939) §§7853-7875.

113. R. S. Mo. (1939) §7757.

114. R. S. Mo. (1939) §§7771-7780.

115. R. S. Mo. (1939) §§7688-7712. A board of police commissioners is created, to be appointed by the governor, which exercises complete control over the police department. The sheriff and the constables of the city are placed under the control of the board. The police officers in such cases are declared to be state officers as well as municipal officers. The budget estimate of the board must be accepted by the municipal assembly.

116. State ex rel. Hawes v. Mason (1899) 153 Mo. 23, 54 S. W. 524.

117. See, for example, R. S. Mo. (1939) §7752 (tax rate for such cities limited); §§7753-7754 (condemnation procedure defined); §§9464-9676 (police pensions established in St. Louis); §§7758-7770 (armory boards established); §§7764-7768 (creation of Board of Children's Guardians authorized); §§10724-10750 (St. Louis school district established and regulated on basis of cities of 500,000 and over).

118. R. S. Mo. (1939) §7644-7683; Mo. Laws of 1939, 545.

119. State ex rel. Field v. Smith (1932) 329 Mo. 1019, 49 S. W. (2d) 74.

120. R. S. Mo. (1939) §§7684-7686.

121. R. S. Mo. (1939) §§7837-7847.

122. R. S. Mo. (1939) §§7848-7849.

123. R. S. Mo. (1939) §§15660-15664.

inhabitants, which classification includes Kansas City and St. Joseph.¹²⁴

It is difficult to imagine a more complete attack on the home rule principle than that contained in these statutes. The application of the distinction of "state" matters from "local" concerns, seems to leave the cities with only the clearly "corporate" functions (such as water, light and gas systems owned and operated by the city) clearly defensible against legislative interference. In practice, the case is not quite so desperate. The legislature has, in fact, left the cities free of control on many matters which might be brought under state supervision. But the fact remains that there is little hope that the home rule cities may depend on the courts for any real independence. Indeed it seems that the courts have gone out of their way to uphold any intervention in the affairs of the cities which seems desirable to the legislature. Under such circumstances, it seems proper to demand that the home rule principle be made effective or that it be abandoned.

5. CONCLUSIONS

The problem of regulation of municipal government has plagued all the states throughout our history. But the industrial expansion of the last seventy-five years has made it acute. The expansion of cities, the increase in the severity of demands upon municipal services, the difficulty of law enforcement in modern times—these and many other influences have combined to produce a pressing need for reform.

Two principal trends may be discerned in recent years, and they are to some degree contradictory. On the one hand, several states have allowed to cities a large degree of freedom to determine their own forms and functions of government, this freedom guaranteed against legislative interference by provisions of the state constitution. In some states the home rule privilege is limited to a few cities, while in others a large number of municipalities can qualify. The extent of freedom permitted to cities under home rule likewise varies widely.

On the other hand, there has been a tendency toward direct interference by state authority in certain specific functions in municipal areas, with some degree of supervision or control by

124. R. S. Mo. (1939) §§10668-10723.

state government substituted for local authority. The schools and the administration of law enforcement are the matters most frequently controlled in this manner. This process of interference is in large part a reaction against "boss" rule and the evils of local politics.

The two trends evidence a clear distrust of the legislature by cities, and a corresponding distrust of cities by state authorities. It is probably correct to say that both attitudes are at least in part justifiable. It cannot be said that either course has corrected the evils decried by proponents of the remedies. Nor can it be said that experience has shown which attitude is the sounder, as a basis for a general policy. Perhaps the most obvious conclusion is that altogether we exhibit a profound cynicism about the efficiency of our representative system of government on both the state and the local level.¹²⁵

The difficulty in Missouri, then, is not unique. Other states have faced the same problems, and have had no markedly greater success than this state. Both trends continue, with no clear indication as to the outcome. Nor is it possible to formulate any very definite principles which would be generally regarded as valid as an approach to the problem. Essentially, the difficulty rests on the question whether popular authority shall be exercised on the state level or on the local level. In practice, all states reach some sort of compromise in the matter. The particular arrangement in force is always the object of attack from both sides, and is constantly a matter of litigation.

It is evident that the status of municipal government in Missouri needs clarification and simplification. The constitutional intent has been flouted in several ways by the legislature, and the courts have been over-generous in permitting such legislative action.

The constitutional requirement that there shall be no more than four classes of cities and towns has been disregarded, in the establishment of the class of villages, outside the fourfold classification. It has further been violated by the almost innumer-

125. On this general subject, consult: Macdonald, A. F., *American City Government and Administration* (1941) 40-101; Zink, Harold, *Government of Cities in the United States* (1939) 37-110; Kneier, C. M., *City Government in the United States* (1934) 32-106; National Resources Committee, *Urban Government* (1939) 21-26; Jones, Victor, *Metropolitan Government* (1942) passim.

able special classes set up for special purposes. The situation now seems to be that the courts will uphold any such special classification, even though it contains but one city, thus making the constitutional restrictions on special legislation of slight value. The result of the whole process is a welter of legislation containing overlapping categories and complexities defying clear definition or analysis.

The home rule cities, and especially the city of St. Louis, have been subjected to a degree of legislative control which seems clearly to violate the intent of the constitutional provisions. Although the constitution seems to authorize the city of St. Louis to exercise the powers of a county, the legislature and the courts have forced upon the city a county government, much of which is quite unnecessary, together with some special agencies not found in other counties, all of which is a burden on the city treasury, but uncontrollable by the city, either as to functions or as to expenditures. The resultant lack of coordination of governmental agencies in St. Louis is quite beyond the power of the city to correct. Some support might be adduced for the status of the police department and the school authorities, but it is difficult to find reasonable justification for the other special agencies. Kansas City has been less affected by this process, due in large part to the fact that the city and county have not been separated. Kansas City does have state control of police administration and election administration.

The attack on this problem might proceed in three separate ways, or by a combination of them. The most obvious attack is by way of changing the constitutional provisions affecting the situation. The provisions in the Missouri constitution are for the most part, distinctly antiquated, and modernization is quite in order. But it is not clear that any phraseology which might be inserted would be proof against the attacks which would inevitably be made. It would be comparatively easy, however, to simplify the provisions of article IX to such an extent as to make the intent much plainer. Some more adequate protection of the independence of home rule cities would seem to be in order.

It is also possible to approach the problem from the legislative side. The general assembly might, by suitable pressure, be influenced to bring order out of the existing confusion, or a general

reform might be achieved by the initiative process. The difficulty here is political; it is not easy to persuade the rural sections of the population that the municipalities need assistance, and the rural areas dominate the legislature. The past experience of St. Louis in appealing to the electorate of the state does not lend encouragement to the plan.

The third possibility is appeal to the courts. There is, however, little hope that the courts as now constituted will reverse the trend of the decisions and restore the original intent of the constitutional provisions.

It is probably true that constitutional revision presents the greatest hope, but it must be admitted that experience does not justify any great optimism. There is no assurance that the revised provisions would not be so distorted by interpretation as to destroy their efficacy.

As a basis for revision, the following principles might be accepted:

1. Home rule should be retained and extended.
 - a. Existing provisions should be simplified and combined into one general provision.
 - b. Clarification on various points should be attempted: *e. g.*, the definition of "municipal" functions.
 - c. The "county" status of St. Louis should be clearly defined.
 - d. The desirability of extending home rule to other cities, and perhaps to all counties, should be carefully canvassed.
 - e. Sec. 15 of art. IX should be modified to make it self-enforcing; *i. e.*, to permit city-county consolidation on the initiative of the area, without statutory authorization.
2. Cities without home rule should be adequately protected.
 - a. The limitations on classification should be restated to prohibit special classifications entirely.
 - b. The advisability of general administrative supervision of municipal government should be considered.
 - c. It should be required that classifications be definite, thus excluding the present optional classifications.
 - d. The classification of villages as now existing in the statutes should either be abolished or constitutionally authorized.

It should be said that such revision will depend for its effect on the extent to which popular opinion demands its effectiveness. The attack by legislation must be expected, and if the future is to be judged by the past, the judicial attitude will be favorable

to legislative distortion of the constitutional restrictions. The only ultimate safeguard lies in the insistence of an alert and informed electorate.

WASHINGTON UNIVERSITY LAW QUARTERLY

Edited by the Undergraduates of Washington University School of Law,
St. Louis. Published in December, February, April, and June at
Washington University, St. Louis, Mo.

Subscription Price \$2.50 per Annum. Single copies, 75 cents.
Back numbers, \$1.00.

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