

REPEAL OF TOWNSHIP)
ORGANIZATION CHAPTER)
CONTEMPLATED BY SENATE)
BILL NO. 72, 65th)
GENERAL ASSEMBLY.)

Proposed amendment to Senate Bill No. 72 providing that county treasurers in former township organization counties shall be county collectors until successors are elected and qualified is unconstitutional as local and special law.

May 3, 1949

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Honorable Forrest Smith
Governor of Missouri
Jefferson City, Missouri

Dear Governor Smith:

We are in receipt of your letter of April 19, 1949, in which you request an opinion of this department, your letter is as follows:

"I am enclosing Perfected Senate Bill No. 74. A proposed amendment to this bill has been suggested as follows: 'Provided, however, that each county treasurer, in counties under township organization elected in 1948, shall serve as county collector from January 1, 1950, until his successor is duly elected and qualified'.

"I would like to have an opinion from your department as to whether this amendment would affect the legality of Senate Bill No. 74 as it is now written if it were adopted.

"In township organization counties the officers are elected as county treasurers and as county treasurers they are ex-officio collectors. Since they are elected to the office of county treasurer can they surrender the office of treasurer and continue to serve as ex-officio collectors."

We have given careful consideration to your aforesaid letter and have examined Senate Bill No. 74 and considered it in the light of the proposed amendment, and we believe it desirable for us to make some comments which we believe pertain to your inquiry and the question submitted therein.

The effect of Senate Bill No. 72, if enacted into law without the proposed amendment mentioned and quoted in your letter would

be the complete abolition of the township form of government in every county in the State in which said form of government now exists, including the abolition of the right and duty of county treasurers in counties in which that form of government now exists to act as ex-officio county collectors. Such right and duty on the part of county treasurers in such counties is derived from the provisions of Section 13989, R.S.A. Mo., 1939, which section is in part as follows:

"The county treasurer of counties having adopted or which may hereafter adopt township organization shall be ex-officio collector * * *."

The section of the statute last above quoted would be repealed if Senate Bill No. 74 should be enacted into law along with all other sections pertaining to and providing for the township form of government. The right of the Legislature to make provisions in the section last above quoted to the effect that county treasurers in township organization counties should be ex-officio county collectors would have been subject to doubt upon the theory that such provisions for the collection of taxes and as to the persons by whom the duty was to be performed when made applicable to some counties in the State and not to others would be local or special law violative of Article 3, Section 40, Paragraph 21 of the Constitution of the State of Missouri, and also Article 4, Section 8 of said State Constitution if it were not for the fact that according to the law providing for the township organization form of government, such form of government might be adopted by, and also available to any and every county in the State and was therefore of general rather than local or special application, and if not for the further fact that the change in the law as to how taxes were to be collected and by whom they were to be collected was a part of the township organization plan. Any seeming violation of the local and special law provisions of the State Constitution by the provision for the township form of government was certainly eliminated by the following provision of Article 6, Section 9 of the 1945 State Constitution:

"Alternative forms of county government for counties of any particular class and the method of adoption thereof may be provided by law."

It follows that if the Legislature was given the power by the Constitution to provide for an alternative form of county government, or in other words, a form of county government other than the one in general use throughout the State, such alternative form of county government when devised could properly include arrangements as to how the work of the county was to be accomplished and by what officers it was to be done. It was therefore constitutional for the Legislature, if it so desired, to make the provision that taxes were to be collected by the county treasurer who was to serve as ex-officio county collector. Furthermore, even before the last above quoted provision was incorporated in the Constitution the Supreme Court of Missouri in response to a resolution by the House of Representatives requesting a judicial declaration as to the constitutionality of the statute on township organization had declared it to be a general plan in the following language:

"* * * This Township organization law contains no provisions, so far as we are able to see, prohibited by the Constitution. It is a general law made for the whole State, and by the terms of the act itself took effect from and, after its passage. Every county in the State may avail itself of the privileges offered by this law by a majority vote of its people. It is left to the option of the counties, whether they will organize under the law or not. If a majority vote for it, such vote does not create the law, but places the county so voting within its provisions, and the organization then takes effect, and also the law, as it existed before the vote was taken. The law does not delegate, nor was it the intention of the lawmakers to delegate legislative authority to the counties. Unless the counties avail themselves of the right to organize they will remain as they were, unaffected by any of the provisions of this statute."

Opinion of the Supreme Court Judges on Township Organization Law, 55 Mo., 295, l.c. 296 and 297.

However, if Senate Bill No. 72 is enacted into law the whole plan of township form of government and the right of counties to adopt such form of government is completely abolished and along

with it the provision as above set forth for the collection of taxes by county treasurers acting as ex-officio county collectors is repealed. This then would leave all counties now under township organization without ex-officio county collectors and without any other kind of a county collector, and the general law applying to the State as a whole and providing for the office of county collector and defining the duties of that office would then be in effect in the counties now under the township organization plan.

We assume that the proposed amendment set forth in your letter has been designed with a view to avoiding the confusion involved in the abolition of the right and duty of county treasurers in counties under township organization to act as ex-officio county collectors by simply providing that the county treasurers who under the law being repealed would have served as ex-officio county collectors shall beginning January 1, 1950, serve as county collectors until their respective successors shall be duly elected and qualified.

We are of the opinion, however, that although the chapter in the Revised Statutes of Missouri, 1939, being chapter 101 and including sections 13928 to 14024, which Senate Bill No. 74 is designed to repeal was constitutional as a whole including the provision that county treasurers in township organization counties should serve as ex-officio county collectors nevertheless, the proposed amendment to said Senate Bill which undertakes to provide that county treasurers in said prescribed counties, but not in counties generally throughout the State, and who shall have been elected in 1948, shall serve as county collectors from January 1, 1950 and until their respective successors are duly elected and qualified is unconstitutional because it undertakes to limit the application of this law to counties which are now governed under the township organization plan, and is therefore a local or special law.

The names of these counties are readily ascertainable, and legislation designed to effect only counties now under the township organization form of government, and not within the terms and provisions of any special permissive provision of the Constitution, is as truly specific in its application as if the amendment designated the counties by name. This is in direct violation of Article 6, Section 8 of the Constitution of Missouri, which reads as follows:

"Provision shall be made by general laws for the organization and classification

of counties except as provided in this Constitution. The number of classes shall not exceed four, and the organization and powers of each class shall be defined by general laws so that all counties within the same class shall possess the same powers and be subject to the same restrictions. A law applicable to any county shall apply to all counties in the class to which such county belongs."
 (Underscoring ours)

It is quite obvious that a law providing that county treasurers in certain designated counties shall be county collectors from and after January 1, 1950, and until their respective successors are duly elected and qualified is designed to be applicable only to the counties designated, and is therefore not applicable to all counties in the particular classes to which the respective designated counties happen to belong, and is therefore contrary to the above quoted provision of the Constitution to the effect that: "A law applicable to any county shall apply to all counties in the class to which such county belongs."

Such a provision is also in direct violation of Article 3, Section 40 of the Constitution of Missouri, which is in part as follows:

"The general assembly shall not pass any local or special law:

"(1) * * * * *
 * * * * *

"(21) Creating offices, prescribing the powers and duties of officers in, or regulating the affairs of counties, * *."

It is clearly apparent that a law which provides that county treasurers elected in 1948 in certain designated counties, which counties happen to be such counties as were under the township organization plan before the law providing for that plan was repealed shall be county collectors in the respective counties from and after January 1, 1950, and until their respective

successors are duly elected and qualified is a law creating offices, prescribing the powers and duties of officers in, and regulating the affairs of counties within the meaning of subdivision 21 of Article 3, Section 40 of the Constitution of Missouri hereinbefore quoted and being by its terms applicable only to such counties as were once under the township form of government is a local or special law and is therefore in violation of the constitution prohibition set forth in Article 3, Section 40, subdivision 21 of the Constitution of the State of Missouri, supra.

CONCLUSION.

We are therefore of the opinion that the proposed amendment to Senate Bill No. 74 is unconstitutional because it amounts to a local or special law within the meaning of the above cited constitutional prohibition of such laws, and we are of the further opinion that if the repeal contemplated in Senate Bill No. 72 shall be accomplished there is no constitutional way in which to provide that the county treasurers elected in 1948 in township organization counties shall be county collectors in such counties from and after January 1, 1950, and until their successors are duly elected and qualified, and we are of the further opinion that in the event of the repeal contemplated by Senate Bill No. 74, there will be no such office as ex-officio county collector in any of such counties as are now under the township form of government, and that the office of county collector in each of said counties will exist as a matter of general law as it exists in all other counties beginning with the effective date of Senate Bill No. 74, but while the office will exist it will be vacant in each of said counties from and after the effective date of the law embodied in said Senate Bill.

Respectfully submitted,

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APPROVED:

J. E. TAYLOR
Attorney General