

CONSTABLES:
COUNTIES UNDER
SPECIAL CHARTER:

County council of St. Louis County has no authority to enact proposed ordinance (Bill No. 31-1953) relating to special deputy constables.



October 30, 1953

Honorable Stanley Wallach
Prosecuting Attorney
St. Louis County
Clayton, Missouri

Dear Sir:

This is in answer to your letter of recent date requesting official opinion of this office and reading as follows:

"We enclose herewith a proposed ordinance up for passage before the St. Louis County Council, which as noted, pertains to appointment of "Special Constables".

"St. Louis County, a county of the First Class, operates under the Charter form of government as adopted by the people by popular vote.

"Section 63.010 RSMo 1949 and following sections in that chapter govern 'Constables' in counties of this classification. Section 63.085 specifically provides for 'deputy Constables' and the number which each Constable may appoint, duties, salaries, qualifications, etc.

"Nowhere in the Chapter referred to is any provision whereby any 'Special Constables' may be appointed.

"It is our opinion such an Ordinance incorporating provisions for appointment of "Special Constables" as in the proposed enclosed bill, is void.

"Will you therefore render us your opinion on this subject, and oblige."

Section 18(e) Art. VI of the Constitution of Missouri provides as follows:

"Laws affecting Charter Counties - Limitations. Laws shall be enacted providing for free and open elections in such counties, and laws may be enacted providing the number and salaries of the judi-

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cial officers therein as provided by this Constitution and by law, but no law shall provide for any other office or employee of the county or fix the salary of any of its officers or employees."

St. Louis county adopted a charter for its own government at a special election March 28, 1950, under the authorization of Section 18(a), Art. VI, Constitution of Missouri.

Since deputy constables are not "judicial officers" from the clear, unequivocal provisions of section 18(e), Art. VI of the Constitution of Missouri, it is apparent that the provisions of Section 63.085, Vernon's Ann. St., Sec. 63.080A Senate Bill 104, 66th General Assembly, Laws of Missouri 1951, p. 375, as well as the other provisions of Chap. 63 RSMo 1949 purporting to provide for constables and deputies, and the pay therefor, in first class counties operating under a charter form of government, are unconstitutional and of no effect.

Sections 3, 4 and 9 of the proposed ordinance provide as follows:

"Section 3. Special Deputy Constables may be appointed hereunder at the initiative of the Constables, for the purpose of performing special police work in handling traffic at school and other pedestrian crossings and other times and places, upon the call of the Constable, and when in the performance of such duties shall have all of the power and authority of Deputy Constables.

"Section 4. Special Deputy Constables may be appointed subject to all the provisions of this ordinance upon the joint application of the person desiring such employment and his employer or sponsor. In such case the Special Deputy Constable shall have the same rights, powers and duties as Deputy Constables upon the premises of the employer or sponsor and elsewhere in the County to the extent necessary to protect the property and assets of the employer or sponsor and to protect the lives and safety of the persons lawfully upon, entering or leaving the premises of the employer or sponsor.

"Section 9. Special Deputy Constables shall receive no compensation from the County, but those appointed pursuant to Section 4 of this Ordinance may be compensated by their employer or sponsor for services in and about the premises of the employer or sponsor, and those appointed pursuant to Section 3 of this ordinance may accept compensation as watchman or guards, from those employing them with the

Honorable Stanley Wallach

written approval of the Constable, to be filed with the County Clerk, setting forth the nature and other particulars of the employment and the amount or rate of compensation to be paid."

We fail to find any provision in the charter of St. Louis County authorizing the enactment of such an ordinance. We are, therefore, of the opinion that the county council does not have power to enact such an ordinance. Since we have arrived at this conclusion, we deem it unnecessary to discuss the question of whether or not other constitutional provisions might prohibit the enactment of such an ordinance by the St. Louis County Council.

CONCLUSION

It is the opinion of this department that the county council of St. Louis does not have power to enact an ordinance relating to the appointment of special deputy constables titled "Bill No. 31-1953".

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. C. B. Burns, Jr.

Very truly yours,

CCB/lid

JOHN M. DALTON
Attorney General