

COUNTIES:
CHARTER FORM
OF GOVERNMENT:
ST. LOUIS COUNTY
POLICE DEPARTMENT:

St. Louis County Police Department has authority to enforce state law in incorporated or unincorporated areas in the county.



August 8, 1957

Honorable Edward W. Garnholz
Prosecuting Attorney
St. Louis County
Clayton, Missouri
Dear Sir:

My office is in receipt of your request for an opinion which reads as follows:

"The Board of Police Commissioners of St. Louis County have requested that I obtain a ruling from you setting forth the legal powers of the St. Louis County Police Department at large. Specifically, does the St. Louis County Police Department have the authority to enforce State laws in the incorporated areas as well as in the unincorporated areas?"

It is believed that the constitutionality of the formation of the St. Louis County charter government, in regard to the functions of the County Police Department, is covered thoroughly in the case of State ex inf. Dalton v. Gamble, et al, 280 S.W. 2d 656. In that case an information in the nature of a quo warranto attacked the authority of the county police department to take over and perform the functions formally vested in the sheriff and constables of the county.

The action was against the Board of Police Commissioners and Superintendent of Police of St. Louis County. In that case the Supreme Court stated at l.c. 657:

"On March 28, 1950, the county of St. Louis, by a vote of its people,

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adopted a charter for its own government pursuant to §18, Art. VI, of the 1945 Constitution of Missouri. Art. II of the charter provided that among the 'County Officers' to be elected were four constables and a sheriff. It also provided that the 'elective County Officers * * * shall have all the powers and perform all the duties provided by law, except as otherwise provided by this charter' and in the event of a vacancy in any elective county office 'the same shall be filled by the County Supervisor subject to confirmation by a majority of the Council.' Art. III, § 6 of the charter provided: 'The governing body of the County shall be the County Council which, except as otherwise provided in this charter, shall have and exercise all the powers and duties vested in counties and county governing bodies by the Constitution and laws of the State of Missouri and by this charter. All legislative power of the county shall be vested in the Council.'

It appears proper here to further quote from the above Gamble opinion where it is said at l.c. 660 as follows:

"A County under the special charter provision of our constitution is possessed to a limited extent of a dual nature and functions in a dual capacity. It must perform state functions over the entire county and may perform functions of a local or municipal nature at least in the unincorporated parts of the county. These are constitutional grants which are not subject to, but take precedence over, the legislative power. St. Louis County alone has the right to determine 'the number, kinds, manner of selection, terms of office and salaries' of its county officers. There can be no doubt that this is a proper constitutional provision, since the people of the state are sovereign, Art. I, §1, and they 'have the inherent, sole and exclusive right to regulate the internal government and police thereof

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* * *. Art. I §3. The constitution is harmonious in recognizing an exception to the provision for general laws for the organization and classification of counties. Art. VI, § 8."

In State ex rel McKittrick v. Williams, 346 Mo. 1003, 144 S.W. 98, 1.c. Mo. 1014, the court quoted from the case of Farmers' Mutual Fire Insurance Company v. Hunolt (Missouri Appeals) 81 S.W. 2d, 977 as follows:

"His authority is county wide. He is not restricted by municipal limits. For better protection and for the enforcement of local ordinance the cities and towns have their police departments or their town marshals. Even the State has its highway patrol. Still the authority of the sheriff with his correlative duty remains. It has become the custom for the sheriff to leave local policing to local enforcement officers but this practice cannot alter his responsibility under the law. Usage cannot alter the law."

The St. Louis county charter provisions involved are contained in the Gamble case on page 658, where the following is stated:

"The central purpose of the amendment is shown by § 4.10, Art. II of the charter as amended, which reads as follows:

"All powers and duties of the offices of Sheriff and Constables of the County with respect to preservation of order, prevention of crimes, and misdemeanors, apprehension and arrest, conserving the peace, and other police and law enforcement functions other than those relating to civil actions and the detention, care, custody and control of persons or prisoners in the County Jail, provided by law, shall be vested in and performed by the Superintendent of Police and the Department of Police of the County as hereinafter provided, and the Sheriff

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and Constables of the County shall have no power or duties with respect to the same except when called upon by the Superintendent of Police as hereinafter provided.'

"Section 49, Article V of the amendment makes provision for a department of police consisting of a board of five police commissioners, a superintendent of police and the department personnel. The superintendent of police is appointed by the board of police commissioners and the superintendent selects the other personnel on the basis of merit.

"The substantial duties and powers of the superintendent and the police department appear in the charter as amended, § 49.10 of Art. V, in part, as follows:

"The Superintendent of Police and the Department of Police, including the duly authorized officers, agents and deputized representatives thereof shall have all the powers and perform all the duties of the Sheriff and the Constables, as provided by law, except those powers and duties expressly vested in the Sheriff and Constables of the County under Section 4.10 of this Charter. In addition thereto, the Superintendent and the Department of Police shall enforce the ordinances and orders of the Council, and have such other powers and duties as may be provided by ordinances of the Council, including, but not limited to, the performance of police duties in incorporated areas of the County under contract authorized or entered into by the Council with the governing body of any such incorporated area. He shall also have the power to deputize members of the police departments of the various municipalities of the County under such standards, conditions and regulations as the Board of Police Commissioners shall approve.'"

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It must be noted that ordinance #570-1955 provides for the operation and administration of the department of police. That ordinance in Section 23.07, Subsection 1, provides for the powers and duties of the superintendent and the department as follows: "1) To have and perform the duties of sheriff and constable as provided by law, including the power to arrest with or without warrant * * *. Such powers and duties of the Superintendent and the Department shall include full responsibility for the enforcement of all State laws throughout the entire St. Louis County, and for the enforcement of ordinances and orders of the County Council in the areas of the county outside the incorporated cities."

It will be seen from the quotations herein that the Supreme Court has ruled that St. Louis County had authority to provide by charter for county officers, and that the sheriff has been delegated to be a county officer. It is believed that not only has a proper charter provision been made, but that the ordinance in regard to "the mechanics of law enforcement in St. Louis County, * * * in harmony with the 1945 Constitution of Missouri," (State v. Gamble, supra, l.c. 662) has been made and provided. In considering this ordinance and the charter, the Supreme Court said, Gamble case l.c. 662:

"The charter as amended and the ordinances are valid enactments and take precedence over general statutory provisions with respect to the agencies for law enforcement in the various counties of the state, being exceptions thereto provided by the constitution. Tremayne v. City of St. Louis, 320 Mo. 120, 6 S.W.2d 935, 940-941. The amended charter and these ordinances of St. Louis County make adequate provision for the enforcement of state laws in St. Louis County. The sheriff and the constables of St. Louis County are bound by the provisions of the charter as amended and by the ordinances specified."

It is believed that the St. Louis County Police Department, under the authority of the Missouri Constitution, the charter

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amendments and the ordinance mentioned herein, has authority to enforce state laws in incorporated areas as well as unincorporated areas. It must not be forgotten, however, that in keeping with the language of State v. Williams, supra, the duty to enforce state laws in municipalities does not fall upon the shoulders of the county police alone.

CONCLUSION

It is therefore the opinion of this office that the St. Louis County Police Department has authority to enforce state laws in incorporated and unincorporated areas within the county.

The foregoing opinion, which I hereby approve, was prepared by my assistant, James W. Faris.

Yours very truly,

JOHN M. DALTON
Attorney General

JWF:db