

CITIES, TOWNS & VILLAGES:
SPECIAL CHARTER TOWNS:

Bridgeton, Missouri, is a special charter town; sections 106.300 and 80.080 RSMo 1949, do not apply to the town of Bridgeton.

November 8, 1960



Honorable Robert Young
Representative, 1st District
3500 Adie Road
St. Ann, Missouri

Dear Mr. Young:

Your recent request for an official opinion reads:

"I am hereby requesting an interpretation of Sections 106.300 and 80.080 Revised Statutes of Missouri, 1949, and a review of any change in this Section in the 1959 revision.

"My particular questions are:

"1. Since the section makes particular reference to 'city officers' (appointive and elective) is it also to be construed to apply to 'Towns' specifically to the Town of Bridgeton?

"2. In the event the scope of Section 106.300 cannot be construed to apply to 'Towns' is there a corresponding section which applies to 'Towns,' i.e., is there a section of the Revised Statutes which can be or has been interpreted to make a violation of the laws of this state the sale to a town of goods or services by an elected member of its Board of Trustees.

"3. Does Section 80.080 apply to Towns, i.e., to Bridgeton or is it to be construed to apply only to 'villages?'"

Mr. Robert Young:

In your letter you refer to Bridgeton as a "town", which we believe to be a correct reference. It was incorporated by an Act of the Missouri Legislature which was approved February 27, 1843, its charter so designates it. We have been advised by the town clerk that Bridgeton continues to operate under said special charter and therefore, its present status is that of a special charter town.

Your first question is whether Section 106.300 RSMo 1949 applies to the town of Bridgeton. That Section reads:

"If any city officer shall be directly or indirectly interested in any contract under the city, or in any work done by the city, or in furnishing supplies for the city, or any of its institutions, he shall be deemed guilty of a misdemeanor; and any appointed officer becoming so interested shall be dismissed from office immediately by the mayor; and upon the mayor becoming satisfied that any elective officer is so interested, he shall immediately suspend such officer and report the facts to the council, whereupon the council, as soon as practicable, shall be convened to hear and determine the same; and if, by two-thirds vote of the council he be found so interested he shall be immediately dismissed from such office."

We believe the above section to be "penal" in the sense that it is to be strictly rather than liberally construed. In this regard we note the Case of State vs. Kelly 103 Mo. App. 711. In that case one Kelly was indicted for violation of Section 106.300, supra (then Section 2346 RSMo 1889). Kelly moved to quash the indictment on several grounds, one of which was that the indictment which charged violation of what is now Section 106.300, did not charge a criminal offense. The motion to quash was sustained. In setting aside this order the St. Louis Court of Appeals said in part:

"But as the statute provides that a member of a municipal assembly may, for violation of the statute be removed from office, the fourth ground of the motion seems to assume that removal from office is the only penalty with which he can be visited for a violation of this statute. This inference can not be drawn from the section itself; nor is it reconcilable with other provisions of the criminal code, which provide, on conviction of certain officers of certain offenses, in addition to the penalty described, they shall be removed from

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office. No reason can be assigned for exempting a member of a municipal assembly of a city from the punishment prescribed for a violation of the statute. Certainly that he may be removed from office is no sufficient reason, or any reason at all, that he should be exempted from criminal punishment. The statute has not made the exemption and is not within the power of the courts to engraft one upon it in favor of this class of municipal officers."

That a penal statute is to be strictly construed is a well recognized principle of Missouri law. In the case of Willis vs. American National Life Insurance Company, 287 SW2d, 98, the Springfield Court of Appeals stated (l.c. 103-4 [3-9]):

"* * *This has been held to be a penal statute, 'highly penal,' it is sometimes said, and is therefore to be strictly construed. But the expression 'strict construction' has been flung about rather loosely. A work horse definition given by Black's Law Dictionary, p. 1127:

'Construction of a statute or other instrument according to its letter, which recognizes nothing that is not expressed, takes the language used in its exact and technical meaning, and admits no equitable considerations or implications.'

has been approved. The penal provisions can be given 'no broader application than is warranted by its plain and unambiguous terms'. The statute must be applied only to such cases as come clearly within its provisions and manifest spirit and intent.'* * * it is not to be regarded as including anything, not within its letter, as well as its spirit, which is not clearly and intelligibly described in the words of the statute, as well as manifestly intended by the Legislature.'"

We further note that the Missouri statutes make a clear distinction between "city" and "town", putting them in definite and separate classifications. See State ex rel. v. Lichte, 226 Mo. 273, l.c. 290, 126 SW 466.

In view of the fact, therefore, that Section 106.300 is a penal statute, that penal statutes are strictly construed, that Missouri law makes a definite and clear distinction between cities and towns, that Section 106.300 uses only the word "city" in its application, we believe that the section applies only to municipal organizations of the "city" classification, and that since Bridgeton

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is a town Section 106.300 would not apply to it.

Your second question is whether, if section 106.300 can not be construed to apply to towns, there is a corresponding section which does apply to towns.

We find no statutory provision similar to Section 106.300 which would apply to towns such as Bridgeton. We do call attention to the public policy frequently expressed against transactions such as those to which you refer. We are enclosing copies of opinions of this office dated June 30, 1948, addressed to Honorable Fred C. Bollow, and May 15, 1953, addressed to Honorable James T. Riley, in which the matter is discussed as it affects school district directors' dealing with their districts. Town trustees occupy the same position of trust with respect to the town as do school district directors with respect to the school district, and the conclusion of those opinions in such regard would be equally applicable to town trustees.

Your third question is whether or not Section 80.080 applies to the town of Bridgeton. Said section reads as follows:

"Trustees - powers and duties as to members and meetings - the board of trustees shall judge of the qualifications, elections and returns of their own members; they may determine rules of their own proceedings, punish any member or other person for disorderly behavior in their presence, and, with the concurrence of four of the trustees, expel any member, but not a second time for the same cause; they shall keep a journal of their proceedings, and, at the desire of any member, shall cause the yeas and nays to be taken and entered on the journal, on any question, resolution or ordinance; and their proceedings shall be public."

Section 80.080, as originally enacted, was found in the second sentence of Section 6, R.S. Mo. 1825, page 765. The first sentence of said section was what is now Section 80.070. These provisions have not been materially altered since their adoption. What is now Section 80.020 was Section 1 of the 1825 enactment and relates entirely to towns and villages incorporated by the county court. Except insofar as such provisions of the 1825 enactment have been amended to apply expressly to special charter towns, such as in Section 80.030, the provisions of enactments applicable to towns and villages incorporated under general law do not apply to special charter towns. State ex rel. v. Arnold, 136 Mo. 446, 449, 38 SW 79.

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CONCLUSION

Therefore, it is the opinion of this office that Sections 106.300 and 80.080, RSMo 1949, do not apply to the town of Bridgeton, nor to the members of its town board of trustees, inasmuch as Bridgeton is a town organized and existing under special charter. However, dealings between members of the board of trustees and such town are contrary to public policy.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

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