



ATTORNEY GENERAL OF MISSOURI

ANDREW BAILEY

November 7, 2024

Dr. Sam Page
Office of the St. Louis County Executive
41 South Central
Clayton, MO 63105
Sent via mail and email to: cecomments@stlouiscounty.mo.gov

Dear Dr. Page,

I write on behalf of my office and Governor Michael L. Parson to ensure that St. Louis County is aware of the correct legal process for filling a vacancy in the office of a county prosecuting attorney. Given the unofficial results of the race for Missouri's 1st Congressional District seat at the November 5, 2024 general election, which will be officially announced under state law no later than December 10, 2024, there will likely be a vacancy in the office of the St. Louis County Prosecuting Attorney. Following any process to fill that vacancy other than that outlined below will likely be a violation of the Constitution and a usurpation of the Governor's exclusive appointments power.

Article IV, § 4 of the Missouri Constitution establishes the Governor's constitutional appointments power; the Governor "shall fill all vacancies in public offices, unless otherwise provided by law[.]" MO. CONST. ART IV, § 4. As the Supreme Court of Missouri recently held, "the constitution is clear, the Governor may fill all vacancies in public offices unless the law provides an alternative method." *Cope v. Parson*, 570 S.W.3d 579, 585 (Mo. banc 2019).

The General Assembly has enacted an implementing statute that confirms the Governor's appointments power for all county prosecuting attorneys. Section 105.050, RSMo, states that if a vacancy in that office occurs, "the governor, upon being satisfied that such vacancy exists, shall appoint some competent person to fill the same until the next regular election for . . . prosecuting attorney[.]" If there is no qualified person to the governor's satisfaction who resides in that county, "then the governor may appoint any person who possesses all the qualifications set forth in section 56.010, except the qualification as to residence." *Id.* And under state law, all counties must have a prosecuting attorney. Section 56.010, RSMo. That process is the exclusive process to fill a vacancy in the office of a county prosecuting attorney.

Section 5.050 of St. Louis County's charter cannot and does not displace the

Governor's authority for this position. A county charter enacted under article VI, § 18(b) of the Constitution authorizes counties to exercise some executive and legislative powers, but only when those powers do not “invade the province of general legislation’ involving public policy of the State as a whole.” *Barber v. Jackson Cnty. Ethics Comm’n*, 935 S.W.2d 62, 66 (Mo. App. W.D. 1996) (quoting *Flower Valley Shopping Center, Inc. v. St. Louis County*, 528 S.W.2d 749, 754 (Mo. banc 1975)). Parameters for county charters set forth in article VI, § 18(b) do not divest the Governor's inherent constitutional appointments power or the legislature's statutes implementing that constitutional power for prosecuting attorneys.

“When a conflict [between state law and a county charter] occurs, the resolution thereof, as a general principle, depends on whether the functions are ‘private, local corporate functions’ or ‘governmental.’” *State ex rel. St. Louis County v. Campbell*, 498 S.W.2d 833, 836 (Mo. App. 1973) (citing *Grant v. Kansas City*, 431 S.W.2d 89, 92 (Mo. banc 1968)). If the former, then local law applies; if the latter, then state law applies. *Id.* “[C]ertain functions have . . . been determined governmental, the control of which remains in the state.” *J.I. Threshing Mach Co.*, 87 S.W.2d at 202. “The police power is one. A municipal corporation has no inherent police power, but derives it solely from delegation by the state.” *Id.* “Some of the other matters, which are purely governmental functions, are those pertaining to suffrage and elections, education, regulation of public utilities, and [the] administration of justice.” *Id.* at 202-03 (emphasis added).

Under this framework, Missouri's courts have frequently concluded that the Constitution and state statutes supersede conflicting charters or ordinances promulgated under a charter. Many of these examples are from St. Louis County's previous efforts to displace state law. *E.g.*, *Information Technologies, Inc. v. St. Louis County & Regional Justice Information Service*, 14 S.W.3d 60, 65 (Mo. App. E.D. 1999) (invalidating St. Louis County ordinance that allowed the county to enter into a no-bid contract to upgrade a computer-aided dispatch system because it conflicted with state procurement law, and holding that the system was “acquired by the County for a public purpose—namely the safety and protection of its citizens.”); *City of Olivette, Missouri v. St. Louis Cnty., Missouri*, 507 S.W.3d 637 (Mo. App. E.D. 2017) (invalidating a St. Louis County ordinance imposing countywide minimum standards for police—a statewide public safety function, not a local public health function as the county contended); *Grant*, 431 S.W.2d at 91-93 (invalidating a Kansas City charter provision authorizing a one-percent earning tax because it conflicted with another state law authorizing the city to levy no more than a one-half of one percent tax, and the effect of the tax would be borne by residents and non-residents); *cf. State on Info. of Dalton ex rel. Shepley v. Gamble*, 280 S.W.2d 656 (Mo. banc 1955) (resolving dispute about whether members of the county board of police commissioners or the county superintendent of police shall perform the county's law enforcement duties under an amendment to the St. Louis County charter, and concluding that a charter county “has the choice as to what officer or agency will be designated to perform the duties.”).

A county prosecuting attorney's influence is wide-ranging, especially in major population centers like St. Louis County. Crime is often porous and does not respect political boundaries. This is especially true in the modern era where technology from cars

to computers allows criminals the ability to range well beyond their home communities to inflict harm. Thus, one prosecutor’s decision to charge or not charge a suspect can have implications far outside of their jurisdiction. County prosecuting attorneys receive support from the State of Missouri, including through the Office of Prosecution Services, and they may ask for assistance and rely upon my office’s services for criminal prosecution. Even more than the computer-aided dispatch system in the *Information Technologies, Inc.* case, the office of the county prosecuting attorney is vital for the “the safety and protection of [the county’s] citizens.” 14 S.W.3d at 65.

If you perceive any conflict between Section 5.050 of the County’s charter and the Governor’s constitutional appointments power or the General Assembly’s legislation implementing that power, you must defer to the Governor.

As the chief legal officer of this state, I am charged with enforcing the plain text and intent of the Constitution and the General Assembly’s actions. I ask that you respond no later than **5:00 p.m. on November 12, 2024**, and confirm that you will not usurp the Governor’s exclusive appointments power.

Sincerely,



ANDREW BAILEY
Missouri Attorney General

cc: Beth Orwick, Chief of Staff, Office of the St. Louis County Executive
Dana Redwing, St. Louis County Counselor