Hon. William E. Babincsak  
State Representative  
1856 South River Drive  
Munster, Indiana

Dear Representative Babincsak:

You have requested my Official Opinion on the following question:

"Hammond, a second class city, has for years operated its park department under the laws of a first class city. Does the 30 cent limitation apply to a second class city which has operated its park department as a first class city prior to the enactment of the 30 cent law, or does this limitation apply only to cities adopting the law to operate as first class cities after the enactment of the 30 cents law limitation."

The 30 cent limitation, to which you refer in your question, is that contained in the Acts of 1919, Ch. 144, Sec. 7A, as added by the Acts of 1963, Ch. 397, Sec. 2, and found in Burns' (1963 Repl.), Section 48-5601b.

The statute which permits a city of the second class to adopt the provision of a statute otherwise applicable only to a city of the first class is the Acts of 1929, Ch. 199, Sec. 1, as found in Burns' (1963 Repl.), Section 48-5601, and reads as follows:

"On petition signed by all members of the board of park commissioners in any city of the second class in Indiana, as now, or as may hereafter be defined, the common council of such city shall have power by ordinance to adopt an act entitled 'An act concerning the department of public parks in cities of the first class, defining its powers and duties, creating a taxing district for park purposes in each city of the first class, repealing conflicting laws, and declaring an emergency,' approved March 14, 1919, and acts amendatory thereof or supplemental thereto, and upon the passage of
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such ordinance, the department of public parks in said city of the second class shall thereafter in all respects have the powers and be governed by the provisions contained in the aforesaid sections of said act as fully as if the same were set out verbatim in this act; and the park commissioners in office at the time of the passage of said ordinance shall continue to serve as provided in section two of said act."

In answering your question, it is well to note that a city is a creature of statute and is an instrumentality of the state whose powers may be enlarged or withdrawn at the pleasure of the Legislature. In the case of State ex rel. Schroeder et al. v. Morris, Mayor, et al. (1927), 199 Ind. 78, 86, 155 N. E. 198, it is stated as follows:

"* * * The city of New Albany is a political subdivision of the state. Its governmental and administrative power is by virtue of the legislative authority. Within its territorial jurisdiction, it is an agent of the state, and except as specially restrained by constitutional restrictions, it is within the continuous exclusive control of the legislature * * *"

The Legislature has seen fit to enact a law authorizing a city of the second class to adopt, if it desires, certain legislation by which its public parks shall be governed.

Although not completely analogous to the present question the statement by the court in West Chicago Park Comrs. v. McMullen et al. (1890), 134 Ill. 170, 25 N. E. 676, is in point. In quoting this case it is not intended to infer that the Indiana statute has created a separate municipal body but the remarks concerning the power of the Legislature are pertinent. The court states on pages 678-679 as follows:

"It is also insisted that, as the effect of the act is to extend the jurisdiction of the park commissioners over streets connecting the parks with the city, not included in the original park acts when adopted by the people, it is necessary to its validity that the consent of the people to be taxed for the improvement and maintenance of such street as a boulevard be first
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