



**SAINT LOUIS COUNTY**  
County Counselor

November 12, 2024

**VIA ELECTRONIC MAIL**

Hon. Andrew Bailey  
Attorney General of Missouri  
Supreme Court Building  
207 W. High Street  
P.O. Box 899  
Jefferson City, Missouri 65102  
c/o Diana.Haines@ago.mo.gov

Dear Mr. Bailey:

As you know, I represent St. Louis County, Missouri, as the duly appointed County Counselor. I write regarding the apparent dispute with the Governor of Missouri pertaining to the authority of the St. Louis County Executive to appoint a successor to the office of St. Louis County Prosecutor in the event of a vacancy in that County office. I am in receipt of your letter of November 7, 2024, in which you set forth your belief that the Governor, rather than the County Executive, possesses this power. You requested that the County respond to your letter no later than the close of business today, November 12, 2024. Please accept this letter as the County's response.

This instant issue is a constitutional one, not one of politics. St. Louis County is a charter county within the meaning of Article VI, section 18(a) of the Missouri Constitution. Pursuant to this constitutional provision, the St. Louis County charter **must** "provide for," among other things, "the number, kinds, **manner of selection**, terms of office and salaries **of the county officers.**" MO. CONST. art. VI, § 18(b) (emphases added). Accordingly, the St. Louis County charter provides for the manner of selecting county officers, including a specific provision that "a vacancy in the office of prosecuting attorney shall be filled by the county executive subject to confirmation by the [county] council." ST. LOUIS CNTY. CHARTER § 5.050. This is the prescribed "manner of selection" of the St. Louis County Prosecuting Attorney in the event of a vacancy.

Your November 7 letter, for whatever reason, ignores Article VI, section 18(b) of the Missouri Constitution's explicit grant of authority to charter counties like St. Louis County, and St. Louis County's corresponding charter provision that determines the manner of selection of the prosecuting attorney. Instead, your letter refers to an entirely different constitutional provision—one that discusses the Governor's authority to "fill all vacancies in public offices, *unless otherwise provided by law.*" MO. CONST. art. IV, § 4 (emphasis added). Article VI, section 18(b) of the Missouri Constitution, however, "otherwise provide[s]" for the filling of the vacancy, as it requires county charters to provide for the "manner of selection . . . of county

officers.”

It bears noting that St. Charles County, Missouri, which just went through this replacement process last April, has a charter provision *identical* to that of St. Louis County. St. Charles County’s Charter provides, in relevant part: “A vacancy in the office of Prosecuting Attorney shall be filled by the County Executive subject to confirmation by the Council.” ST. CHARLES CNTY. CHARTER § 4.1002. As such, it was no surprise that St. Charles County Executive Steve Ehlmann—not the Governor—appointed the prosecuting attorney upon a vacancy in that county office, as required by Article VI, section 18(b) of the Missouri Constitution and the St. Charles County Charter. Conversely, in respect to the City of St. Louis, the Governor appointed the City of St. Louis Circuit Attorney last May upon a vacancy in that office. This is unsurprising, however, because Article VI, section 31 of the Missouri Constitution provides that the City of St. Louis’s Charter may *not* provide for the manner of selection of that office: “The city of St. Louis . . . may, *except for the office of circuit attorney*, amend or revise its present charter to provide for the number, kinds, *manner of selection*, terms of office and salaries *of its county officers* . . . .” The process employed with respect to the vacancy in the City of St. Louis Circuit Attorney’s Office is thus of no moment.

Your November 7 letter also points to a statute that provides “if any vacancy shall happen from any cause in the office of . . . prosecuting attorney . . . , the governor, upon being satisfied that such vacancy exists, shall appoint some competent person to fill the same until the next regular election.” MO. REV. STAT. § 105.050. But this statute has no application here, as the Missouri Constitution directs the source for the manner of selection of county officers in charter counties. In any event, of course, it has long been recognized that “where the statute of the state comes in conflict with the constitution either of the state or the United States the latter necessarily controls.” *State v. Warner*, 65 S.W. 584, 587 (Mo. 1901).

In this regard, it is well settled that the constitutional powers granted to charter counties like St. Louis County “are not subject to, but take precedence over, the legislative power.” *State ex inf. Dalton ex rel. Shepley v. Gamble*, 280 S.W.2d 656, 660 (Mo. banc 1955). Indeed, the Missouri Supreme Court has held that “St. Louis County alone has the right to determine ‘the number, kinds, manner of selection, terms of office and salaries’ of its county officers.” *Id.* It is for this reason that your cited authorities distinguishing between governmental and private, local, corporate functions are inapposite. Instead, the relevant cases recognize as plenary a charter county’s authority to regulate the manner of selecting its officers via its charter. *See id.*; *State ex inf. Ashcroft ex rel. St. Louis Cnty. v. O’Brien*, 610 S.W.2d 638, 642 (Mo. Ct. App. 1980).

In sum, the Missouri Constitution requires the St. Louis County Charter provide for the manner of selection of county officers. The St. Louis County Charter does just that, expressly, by requiring the St. Louis County Executive to appoint a successor to the office of St. Louis County Prosecuting Attorney in the event of a vacancy, subject to approval by the County Council. The County Executive intends to exercise his sole authority in this regard, as I have previously advised the Governor.

The residents of St. Louis County, Missouri, deserve a constitutionally correct process for the appointment of the St. Louis County Prosecuting Attorney. St. Louis County residents approved the charter provision that governs this situation, and it should be followed. There is no basis for the Governor to try to usurp this local right. If you have additional legal authority to support your previously expressed contrary provision that you would like the County to consider and review, I ask that you provide it to me by the close of business November 15, 2024. Otherwise, St. Louis County will consider this matter resolved and move forward.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Dana Tucker Redwing', with a long horizontal flourish extending to the right.

Dana Tucker Redwing, Esq.