

WATER POLLUTION BOARD: Kansas City, Missouri, and other  
CONSTITUTIONAL CHARTER CITIES: constitutional charter cities of  
SEWAGE DISPOSAL SYSTEMS: the State of Missouri, are required  
to obtain a permit for the construction of sanitary sewers, by virtue of Chapter 204, RSMo, Cum. Supp. 1957, when the disposal of sewage, industrial wastes or other wastes constitute pollution as defined in this chapter; that those constitutional charter cities are required to submit plans and specifications for proposed additions to their sewage collection system when the discharge of sewage constitutes pollution as defined in this chapter.

October 17, 1958

H. M. Hardwicke, M.D.  
Acting Director Division of Health  
State Office Building  
Jefferson City, Missouri

Dear Dr. Hardwicke:

This is in response to your letter of August 18, 1958, in which you request an opinion from this office. We quote:

"In reference to the Water Pollution Law, Chapter 204, Cumulative Supplement, 1957, Revised Statutes of Missouri, 1949, the question has arisen as to whether or not Kansas City, Missouri, is required to submit plans and specifications for proposed additions to the sewage collection system. We are enclosing herewith a copy of a letter from Mr. Reed McKinley, Director of Public Works, Kansas City, in reference to the matter.

"It is respectfully requested that you furnish us with an opinion in this matter at your earliest convenience. In the event Kansas City, Missouri, is not required to obtain a permit for construction of sanitary sewers, we respectfully request an opinion as to whether or not other chartered cities in Missouri are required to obtain a permit for the construction of sanitary sewers."

It is the opinion of this office that Kansas City, Missouri, and other constitutional charter cities of the State of Missouri, are required to obtain a permit for the construction of sanitary sewers, by virtue of Chapter 204, RSMo, Cum.



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Supp. 1957, when the disposal of sewage, industrial wastes or other wastes constitute pollution as defined in this chapter; that those constitutional charter cities are required to submit plans and specifications for proposed additions to their sewage collection system when the discharge of sewage constitutes pollution as defined in this chapter.

Since this office submitted an opinion in June, 1956, the State Legislature has enacted Chapter 204 of the Revised Statutes of Missouri, Cumulative Supplement 1957, which pertains to water pollution in the State of Missouri. We wish to call your attention to a few sections of this Chapter which give an idea of the policy expressed therein. We quote Section 204.010, subsection (5):

"(5) 'Pollution', the discharge or deposit of sewage, industrial waste or other wastes into the waters of the state in such condition, manner or quantity which causes the waters to be contaminated, unclean, impure, odorous or noxious to such an extent as to be detrimental to public health, to create a public nuisance, to kill or have an unreasonably harmful effect upon fish or other aquatic life, or upon game or other wildlife, or unreasonably detrimental to agriculture, industrial, recreational or other reasonable uses."

We also quote Section 204.020 and Section 204.030, paragraphs 1, 2 and 3:

"204.020. Policy declared.--Inasmuch as the people of the state of Missouri are dependent upon the rivers, streams, lakes and subsurface waters of the state for public and private water supply and for agricultural, industrial and recreational uses, it is declared to be the policy of the state of Missouri to act in the public interest to restore and maintain a reasonable degree of purity in the waters of the state, and to require, where necessary, reasonable treatment of sewage, industrial wastes and other wastes prior to their discharge into the waters of the state."

"204.030. Water pollution unlawful--sewage and waste discharges into waters regulated--

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permits required--revocation, notice.--1. It is unlawful for any person to cause pollution as defined in section 204.010. Any such action is hereby declared to be a public nuisance.

"2. No person, without first securing from the board a permit, shall construct, install or modify any system for disposal of sewage, industrial wastes, or other wastes or any extension or addition thereto when the disposal of the sewage, industrial wastes or other wastes constitutes pollution as defined in this chapter; increase the volume or strength of any sewage, industrial wastes or other wastes in excess of permissive discharges specified under any existing permit; or construct or use any new outlet for the discharge of any sewage, industrial wastes or other wastes into the waters of the state which constitutes pollution as defined in this chapter."

"3. Any person desiring to erect or modify facilities or commence or alter an operation of any type which will result in the discharge of sewage, industrial wastes or other wastes into the waters of the state shall apply to the board for a permit to make a discharge which constitutes pollution as defined in this chapter. The board, under the conditions it prescribes, may require the submission of such plans, specifications and other information as it deems relevant in connection with the issuance of the permits. The board shall determine whether or not the discharge will cause a condition of pollution contrary to the public interest. The board may issue a permit which authorizes the person to make the discharge, and may specify on the permit the conditions under which the discharge shall be made. The board may revoke or modify any permit if the holder of the permit is found to be in violation of subsection 2, or if the holder of the permit fails to operate an existing facility as specified in the approved plan. No permit may be revoked or modified without first giving thirty days' written notice to the holder of the permit of intent to revoke or modify the permit."

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You will observe that it is the purpose of this enactment to enable the State of Missouri to regulate and control the discharge of impure, odorous and noxious materials into the State's water supply and streams in the prevention of contamination and diseases which would be a detriment to the public health of the State in general. It would appear upon reading Chapter 204 that the law applies to all persons, including bodies politic and corporate, and to partnerships and other unincorporated associations, and that there would be no exception. We submit that constitutional charter cities are "bodies politic".

We wish to direct your attention now to an opinion by this office of June 14, 1956, a copy of which is enclosed. On reading this you will find that it sets forth the law with respect to the force and effect of laws enacted by constitutional charter cities, such as Kansas City. Briefly, the law has been construed to mean that where the provisions of a constitutional charter of a city chartered under Section 19, Article VI of the 1945 Constitution of Missouri, and the general statutes of Missouri are in conflict as to a municipal function, the constitutional charter controls or supersedes the general law. Although you may also observe from this former opinion that it has been determined by the courts of Missouri that the construction of a system of sewers and sewage treatment facilities for the municipality is a municipal function, it is now our belief that Chapter 204 establishes an overriding and general policy of the state for the purpose of preventing water pollution. It is that pollution with which the state has a concern, that it may prevent disease, infection, and the loss of our river life. The Supreme Court of Missouri en banc, in September, 1955, in the case of State v. Kemp, 283 S.W. 2d 502, 1.c. 515, states:

"Each of them recognizes and holds inviolable the rule that the charter of a city (organized as in Kansas City) is subordinate to the will of the General Assembly insofar as it relates to governmental policy as distinguished from matters of local municipal concern."

We believe that the construction of sanitary sewers is no longer a matter of sole local concern to constitutional charter cities in the State of Missouri, that they are a part of a system for the disposal of sewage, and that their construction is a matter of general state concern.

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Having established the applicability of Chapter 204 to constitutional charter cities, such as Kansas City, we wish merely to emphasize the fact that it is when pollution exists, or will exist, the existence of which is to be determined by the Water Pollution Board, that a permit for construction, installation or modification of a system for the disposal of sewage or other wastes is required. If a system of disposal will not increase the volume or strength of sewage and other wastes in excess of permissive discharges under any existing permit, a new permit would not be required. Therefore, it is when there is a finding that pollution as defined by this chapter will exist that a permit will be required and that the Water Pollution Board may require the submission of such plans, specifications and other information it deems relative in connection with the issuance of the permits. This is as required by Section 204.030, paragraph 3.

#### CONCLUSION

It is the opinion of this office that Kansas City, Missouri, and other constitutional charter cities of the State of Missouri, are required to obtain a permit for the construction of sanitary sewers, by virtue of Chapter 204, RSMo, Cum. Supp. 1957, when the disposal of sewage, industrial wastes or other wastes constitute pollution as defined in this chapter; that those constitutional charter cities are required to submit plans and specifications for proposed additions to their sewage collection system when the discharge of sewage constitutes pollution as defined in this chapter.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James B. Slusher.

Very truly yours,

JOHN M. DALTON  
Attorney General

JBS:mc