

Answer by letter-Wood

May 27, 1970

OPINION LETTER NO. 77



Honorable Eugene F. Mazzuca
State Representative
Sixty-seventh District
6215 Victoria Avenue
St. Louis, Missouri 63139

Dear Representative Mazzuca:

You have asked for my opinion as to the right of abutting property owners on "unimproved" streets in the City of St. Louis to receive the same quality of street maintenance as abutting owners on "improved" streets.

You advised us that it is your understanding that an "improved street" has curbing while an "unimproved street" does not. You also stated that "improved streets" receive complete resurfacing while "unimproved streets" receive only patching.

The Director of Streets of St. Louis informs us that it is his view that an "improved street" is one which has been built according to city specifications, and, with the exception of a few major traffic arteries, is built at the expense of property owners. He states that an "unimproved street" is sub-standard and does not meet engineering requirements. The Director further advises that there are approximately one thousand miles of improved streets and one hundred miles of unimproved streets in the City. According to the Director, the Department of Streets' annual budget permits paving of thirty-two miles of street, all of which is done on improved streets, only.

We understand from the Comptroller of St. Louis that the City's annual cost for street construction and maintenance greatly exceeds the amount received from the State Motor Vehicle Fuel Tax (Article IV, Section 30(a) (2), Constitution of Missouri), the part of the expenditures in excess of the amount received from the state tax coming from city general revenue.

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The Motor Vehicle Fuel Tax remitted by the State to the City of St. Louis is:

" . . . solely for construction, reconstruction, maintenance, repair, policing, signing, lighting and cleaning roads and streets and for the payment of principal and interest on indebtedness incurred prior to the effective date of this section on account of road and street purposes, and the use thereof being subject to such other provisions and restrictions as provided by law. . . ." (Article IV, Section 30 (a) (2), Constitution of Missouri)

We are unaware of any Missouri Statute or St. Louis Charter provision making further restrictions or controls on the City's use of Motor Vehicle Fuel Tax monies. Although the Constitution provides for the allocation of these funds to the various cities on the basis of the ratio of the particular cities' population to the population of all eligible cities (Article IV, Section 30(a) (2), supra), we regard this only as a limitation on the inter-city distribution of the funds, and not as a limitation on the manner of using the funds within any particular city. We do not regard the City's use of such money for paving its "improved" streets and repairing its "unimproved" streets as violative of Article IV, Section 30(a) (2), supra.

Section 82.190, RSMo 1959 confers on constitutional charter cities " . . . exclusive control over [their] public highways, streets, avenues, alleys and public places . . . "

Article XIII, Section 13 of the Charter of the City of St. Louis provides:

"The department of streets shall have charge of the repairing, cleaning and maintenance of all public highways, streets, boulevards, alleys, bridges, wharves and levees; . . . and except as otherwise provided by law or ordinance shall have charge of the enforcement and execution of all ordinances relating to any of the matters referred to in this section"

Article XXII, Section 3 of the Charter authorizes the creation of benefit or taxing districts to pay, in whole or in part from

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special assessments in such districts, for the construction or other improvements of public highways, streets, boulevards, and alleys. Section 10 of Article XXII directs that ordinances for the "improvement" of public highways, streets, boulevards and parkways shall be paid for by special assessment of the property owners within the benefit or taxing district but permits the ordinance to provide for payment of a portion of the cost of such "improvement" by the City. "Improvement" is stated to include:

". . . grading, regrading, preparing roadbed, placing foundation, building of super-structure, resurfacing, repaving, construction and reconstruction of curb, gutters, roadway, paving and crosswalks and intersections."

Section 13 of Article XXII requires at least one-fourth of the cost of reconstruction of any public highway, street, boulevard, parkway or alley within ten years after fully paving same to be borne by the City.

We find no other pertinent Charter provision, and in those already referred to, we find no requirement that the Department of Streets use city funds rather than special assessments to "improve" (in the sense of Article XXII, Section 10) particular streets. If a particular ordinance so provides, the Department must, of course, use City funds to pay for the portion of the street "improvement" required by the ordinance.

The Department of Streets has evidently adopted a policy of "repairing" streets that have not been "improved" within the meaning and through the procedure of Article XXII, Section 10. Section 259.010 of the Revised Code of the City of St. Louis, 1960, defines "repair" as:

". . . to restore, any hole, depression or excavation in any street to a good, safe or sound condition after deterioration, injury, damage, dilapidation or partial destruction."

Section 259.020 of the Revised Code provides:

". . . whenever in the opinion of the director of streets the pavement of the roadway of any improved public highway is in need of repair, the street commissioner shall cause such repairs to be made, and the cost

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thereof shall be charged to and paid
out of appropriations for current
expenses of the Street Division"

The Director of Streets is evidently "repairing" all streets and highways of the City within the limits of funds appropriated to his department.

In sum, we can find no violation of any constitutional, statutory, charter or ordinance provision by the Department of Streets of the City of St. Louis in its policy of paving only "improved streets" from City street funds.

" . . . a city may 'for its own purposes, lawfully divide its funds or allocate them in any manner it sees fit or subject its general revenue funds to particular public purposes, so long as it does not do so contrary to statute or its charter' . . . " (Automobile Club of Missouri v. City of St. Louis, 334 S.W.2d 355, 364 (Div. 2, 1960)).

An ordinance could be enacted consistent with the Charter (Article XXII, Section 10) requiring that City funds be used to pay for any portion of the cost of "improving" all city streets, but in the absence of such an ordinance, we cannot find legal fault with the present policy.

Yours very truly,

JOHN C. DANFORTH
Attorney General