

SIDEWALKS:
TAXATION (MOTOR VEHICLE):
CITIES, TOWNS AND VILLAGES:
MOTOR VEHICLE GASOLINE TAX:

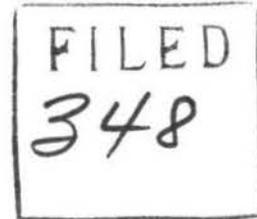
1. The motor vehicle fuel tax funds appropriated to a city under the provisions of Article IV, Section 30(a) of the Missouri Constitution cannot be used to construct or maintain side-

walks. 2. General revenue funds of a city of the fourth class may be used to construct or maintain sidewalks in the city under Section 88.680, RSMo 1969.

OPINION NO. 348

October 19, 1971

Honorable Richard M. Marshall
Representative, District 43
111 South Bemiston
St. Louis, Missouri 63105



Dear Representative Marshall:

This is in response to your request for an opinion as follows:

"We are writing you as State Representative for the district in which the City of Glendale is located to ask that you secure an opinion of the Attorney General for us on a matter which we believe is probably of general interest and concern. If the answer comes back as we fear it might, it might be a matter in which the State laws could be amended.

"The thing we are concerned about is the ability of the City of [sic] use money from general funds or from money paid over to the City from the State Road Fund by St. Louis County for the purpose of repairing sidewalks or of constructing or reconstructing sidewalks. In our City, as well as we are sure in many others, there are sidewalks along main thoroughfares such as Sappington Road and Berry Road, which really do not specifically benefit the immediate property owners, but which are essential for the safety of pedestrians walking along these relatively narrow rights-of-way. It seems to us unreasonable to burden the immediate property owners with the expense of repairing or constructing walks along these main thoroughfares and yet are unable to find the statutory authority to do anything but that. We would appreciate an opinion from the Attorney General as to whether

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there is any authority authorizing a city of the fourth class to repair or reconstruct sidewalks, either from our general funds or from the State Road Fund."

The city of Glendale is a fourth class city.

We assume the state road funds to which you refer are the funds received from the State Highway Department under Article IV, Section 30(a) of the Constitution of Missouri. This constitutional provision provides for the collection of a fuel tax on fuel used for propelling highway motor vehicles. It provides that the net proceeds of the tax after deducting cost of collection, apportionment, and making refunds shall be apportioned between the counties, cities, and the state as hereinafter provided and shall stand appropriated without legislative action for the following purposes:

"Fifteen per cent of the remaining net proceeds shall be allocated to the various incorporated cities, towns and villages within the state having a population of more than two hundred according to the last preceding federal decennial census, 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. . . ."

Constitutional provisions are subject to the same rules of construction as others with due regard being given to broader scope and objects of the Constitution. *Wring v. City of Jefferson*, 413 S.W.2d 292 (Mo. banc 1967). In construing constitutional provisions the intent of the instrument is paramount. *State ex rel. Harry L. Hussman Refrigerator & Supply Company v. City of St. Louis*, 319 Mo. 497, 5 S.W.2d 1080 (banc 1928). The intent and purpose of lawmakers is of primary importance to determining true meaning and scope of constitutional provisions. *Graves v. Purcell*, 337 Mo. 574, 85 S.W.2d 543 (banc 1935).

It is our view these funds derived under this constitutional provision stand appropriated to the city only for the construction, reconstruction, maintenance, repair, policing, signing and lighting and treating "roads and streets" subject to such other provisions and restrictions as provided by law. The question presented by you is whether these funds can be used for the construction of sidewalks.

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This requires the construction or interpretation of the terms "roads and streets" in this constitutional provision. It is our view that a sidewalk does not come within the provisions of this constitutional provision.

In *Quinn v. Graham*, 428 S.W.2d 178 (Spr.Ct.App. 1968) the question was the sufficiency of a notice given to a city of the location of an accident as happening on a "sidewalk" when the accident actually happened on a "parkway" between the sidewalk and the curb. In discussing the sufficiency of this notice, the court stated l.c. 185:

"While 'street,' in a legal sense, may encompass all parts of the way, it is a matter of common knowledge, as displayed by all the parties and witnesses in this cause, that there are definite and separate areas of the entire easement devoted to different uses. The legislature recognizes the distinction by providing different systems for financing the construction and maintenance of each segment. V.A.M.S. §§ 88.507-88.530 and 88.870-88.900. The area between the curbs is generally thought of as being primarily designed for vehicular traffic. A parkway consists of that particular area of the way lying between the roadway and sidewalk or between the curb and sidewalk, while 'sidewalk' is defined as 'a walk for foot passengers usually at the side of the street or roadway; a foot pavement.' Webster's Third New International Dictionary, 1966, p. 2113; *Rentfro v. Weelock Bros.*, Mo.App., 364 S.W.2d 55, 57(1); *Wendegatz v. Kansas City Gas Co.*, Mo.App., 217 S.W.2d 269, 271(2, 3); 31 Words and Phrases, Parkway, pp. 159-161; 10 *McQuillin--Municipal Corporations*, 1966 Revised Vol., § 30.03, pp. 620-624, § 30.05, pp. 627-628, § 30.11, pp. 641-645. Therefore, when the notice designated 'the sidewalk' as the 'place where,' persons of ordinary intelligence would direct their attention to an inspection of the walks designed for foot passengers in an effort to locate the site and cause of the alleged fall. The proof belies the notice, for the accident did not occur on the sidewalk but 'took place * * * in * * * the parkway between the curb line and the sidewalk * * * in the dirt,' where plaintiff 'knew the parkway was not sidewalk.'"

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In a broad sense the terms "roads or streets" may include that portion of the right-of-way used for vehicular and pedestrian traffic. However, the legislature has, in providing for the construction and maintenance of streets and sidewalks, considered a street and a sidewalk as separate and distinct objects or projects. Sections 88.680, 88.703, 88.700, 88.707, 88.710, RSMo 1969. In all these statutes the legislature has considered matters relating to the construction and maintenance of sidewalks as separate and distinct from the maintenance and construction of streets.

We believe the terms "roads and streets" as used in this constitutional provision should receive the same interpretation or construction as the statute governing the same subject matter, and that it was not intended by this constitutional provision to provide funds for the construction or maintenance of sidewalks.

You also inquire whether general revenue funds of a fourth class city may be used to build sidewalks.

Section 88.680, RSMo 1969, provides:

"The cost of paving, macadamizing, guttering and curbing (where such curb is set out into the street beyond the sidewalks) all streets, avenues, alleys and other highways, or any part thereof or any connection therewith, and repairing the same, and for doing all excavating and grading necessary for the same, after said streets, avenues, alleys and other highways, or parts thereof or connections therewith, have been first brought to grade, as provided in section 88.670, shall be levied as a special assessment upon all lots and pieces of grounds upon either side of such street, avenue, alley or other highway, or part thereof or connection therewith, abutting thereon, along the distance improved, in proportion to the front foot; provided, that the cost of paving, macadamizing, curbing and guttering any street, avenue, alley or highway, or any part thereof, and the cost of repairing and cleaning of the same and of making and repairing sidewalks may be paid out of the general revenue fund of the city or other funds which the city may have for such purposes, if the board of aldermen so desires, in which case the proceedings of the city for such improvements shall specify that payment will be made out of the general revenue funds or other funds in whole or in part." (Emphasis supplied)

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It is our opinion that under this section general revenue funds of a fourth class city or other funds which the city may have for such purposes may be used for making and repairing sidewalks if the board of aldermen of the city so desires, provided the proceedings of the city for such improvements specify that payment shall be made out of the general revenue funds or other funds in whole or in part. However, this does not include any funds received by the city under the provisions of the above constitutional provision.

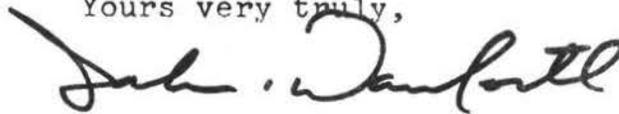
CONCLUSION

It is the opinion of this office that:

1. The motor vehicle fuel tax funds appropriated to a city under the provisions of Article IV, Section 30(a) of the Missouri Constitution cannot be used to construct or maintain sidewalks.
2. General revenue funds of a city of the fourth class may be used to construct or maintain sidewalks in the city under Section 88.680, RSMo 1969.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Moody Mansur.

Yours very truly,



JOHN C. DANFORTH
Attorney general