

CITIES, TOWNS & VILLAGES: Authority of Board of Public Works

BOARD OF PUBLIC WORKS,  
CITY OF LOUISIANA : Board of limited powers.

March 11, 1935.



Mr. Davis Benning  
Vice-President  
Board of Public Works  
Louisiana, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of recent date in which you request an opinion. Your letter is as follows:

"I am writing you for an opinion for the Board of Public Works of the City of Louisiana, Missouri.

The City of Louisiana has just completed the purchase of the local water company. A bond issue was carried for the purchase of the water company and in addition to the purchase price several thousand dollars was provided for the repairing and improvement of the plant. The purchase price has been paid, the water company has been turned over to the city and the money for repairs and improvements is now in the hands of the City Council.

The Mayor has appointed the Board of Public Works and the appointments have been confirmed by the City Council. The members of the board have given bond as required by law and have taken their oaths of office. The water company and the plant have been turned over to the board and the board has assumed jurisdiction of the entire property.

"Section 7654 of the Revised Statutes of Missouri defines the powers of the board but the question has arisen as to the expenditure of the money now in the hands of the City for repairing and improving the present plant. Shall this work be done under the supervision of the City Council or under the supervision of the Board of Public Works? Just where does the authority of the Board of Public Works begin?"

Supplementing your letter of request we have before us a copy of Ordinance No. 3634, adopted and approved by the City Council of the City of Louisiana, of date of February 2, 1934; and also in connection with your letter we have your telephonic communication in which you state, as we understand it, that the City of Louisiana has heretofore voted bonds to the extent of \$210,000 for the purpose of constructing water works system, and bonds to the extent of \$70,000 for the purpose of constructing sanitary sewer system. We are also informed that your City has purchased the two old systems now in use for the sum of \$130,000 and that the balance of the fund, to-wit, \$150,000 is desired to be used for the rehabilitation of both systems. We are also informed that the City of Louisiana is operating under a special charter.

Your question is -- Shall this money to be spent for repairing, improving and rehabilitating the system of water works and sewerage now owned by the City of Louisiana, be under the supervision of the City Council or under the supervision of the Board of Public Works of said city heretofore appointed?

Section 7651, R. S. Mo. 1929, provides as follows:

"Any city of the third or fourth class, and any town or village, and any city now organized or which may hereafter be organized and having a special charter, and which now has or may hereafter have

"less than thirty thousand inhabitants, shall have power to erect or to acquire, by purchase or otherwise, maintain and operate, waterworks, gas works, electric light and power plant, steam heating plant, or any other device or plant for furnishing light, power or heat, telephone plant, or exchange, street railway or any other public transportation, conduit system, public auditorium or convention hall, which are hereby declared public utilities, and such cities, towns or villages are hereby authorized and empowered to provide for the erection or extension of the same by the issue of bonds therefor, and any city, town or village which may own, maintain or operate, and which may hereafter acquire, by purchase or otherwise, and operate, or which may engage in the construction of any of the plants, systems or works mentioned in this section, is hereby authorized and empowered to establish, by ordinance, within such city, town or village, an executive department to be known as the 'board of public works,' to consist of four persons, electors of said city, town or village, who have resided therein for a period of two years next before their appointment, who shall be appointed by the mayor of such city, town or village, and confirmed by the common council in such manner as other appointive officers of such city, town or village are appointed and confirmed. The members of such board shall hold office for a term of four years each, or until their successors are appointed and qualified: Provided, that the members of said board shall hold office for a term of four years each, except the first incumbents, as members of said board of public works, who shall be appointed and hold office for the term of one, two, three and four years respectively."

Section 7652, R. S. Mo. 1929, provides for the appointment of non-partisan board of public works.

The powers and duties of the Board of Public Works are provided in Section 7654, R. S. No. 1929, which is as follows:

"Whenever any such city mentioned in section 7651 shall have by ordinance established a board of public works, as herein provided, such board so established in such city, town or village shall, during the existence of said board, have the power, and it shall be its duty, to take charge of and exercise control over any water works, gas works, electric light and power plant, steam heating plant or any other device or plant for furnishing light, power or heat, telephone plant or exchange, street railway or any other public transportation, conduit system or any other public utility whatever which may be owned by such city, town or village at the time such board is so established, or which may be thereafter established or acquired by such city, town or village, by purchase or otherwise, and all appurtenances thereto belonging, and shall enforce the performance of all contracts and work, and have charge and custody of all books, property and assets belonging or appertaining to such plant or plants."

And said Board of Public Works may be given additional powers by the common council of said city under the provisions of Section 7655, R. S. No. 1929, which is as follows:

"Said board shall also exercise such other powers and perform such other duties in the superintendence of public works, improvements and repairs constructed by authority of the common council or owned by the city as may be prescribed by ordinance. Said board shall make all necessary regulations for the government of the department not inconsistent with the general laws of this state, the charter of such city or the ordinances thereof."

Section 7660, R. S. No. 1929, provides that the Board of Public Works may assess and collect and provide for the rates to be charged, all of which shall be under the supervision of the Board of Public Works subject to the ordinance of such city, town or village.

By the provisions of Section 7654, supra, quoted above, the Board of Public Works shall "have the power, and it shall be its duty, to take charge of and exercise control over any water works, gas works, electric light and power plant, steam heating plant or any other device or plant for furnishing light, power or heat etc."

And if the further powers are granted by the common council, under Section 7655, supra, the "said board shall also exercise such other powers and perform such other duties in the superintendence of public works, improvements and repairs constructed by authority of the common council or owned by the city as may be prescribed by ordinance."

We take it that when the city creates a Board of Public Works under Section 7651, supra, that the Board of Public Works has the powers as set forth in Section 7654, supra, and if the Council sees fit it may further give to the Board of Public Works the powers under Section 7655, supra.

In Ordinance No. 3634, of the City of Louisiana, creating the Board of Public Works, it is provided, among other things, as follows (Section 5):

"Said board of Public Works shall have under its special charge the City Water Plant and City Sanitary Sewer System and all appurtenances thereunto belonging, and shall have the management and control of the City Water Plant and Sewer System and of the assessment of water rates and sewer rates and the collection of revenue therefrom."

By this section the City Council has only delegated certain powers to the Board of Public Works and limited their powers to the management and control of same. The question, then, is whether the Board of Public Works under the terms of

this ordinance would have a right to expend the \$150,000, or part of same, for the rehabilitation of the two systems.

In determining what its powers are, we must first ascertain what the term "have the management and control" means.

In 38 C. J., page 521, the term "manage" is defined as follows:

"A term meaning to administer; to carry on; to conduct; to control; to direct; to direct or conduct affairs; to direct the concerns of; to govern; to guide; to handle; to have under control and direction; to order; to oversee;"

The Century Dictionary defines the word "management" as "the act of managing by direction or regulation; conduct; administration; governing; direction; guidance; caring; charge; superintendence." It defines the word "control" as meaning, "subject to authority; direct; regulate; govern; dominate; to have superior force and authority over."

The Standard Dictionary defines "management" as "carry on; directing; conducting; superintendence; having the general management, conduct and direction of something; act as responsible or executive head", and defines "control" as, "to exercise a direct, restraining or governing influence over; regulate; regulating power; restraining or directing influence."

Bouvier's, 3d Revision, p. 2073, defines the word "manage" to mean, "direct; control; govern; administer; oversee."

In the case of *Schneider v. City of Ann Arbor*, 162 N. W. 113 (Mich.), the court said:

"The board of public works is not the governing body of the city; it is a board of limited powers."

From the reading of the statutes, and Ordinance of the City of Louisiana creating the Board of Public Works and delegating to them certain powers under the ordinance, we think

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that its powers have been limited to superintending the operation of the two systems and not delegated to them the power to expend the \$150,000 for the rehabilitation of the two systems, and that the power of improving, repairing, and rehabilitation of the systems is still in the City Council of the City of Louisiana.

Of course, we do not mean to say that the Board of Public Works would not have the right to improve and make repairs of the two systems incidental to its operation, but, in the expenditure of such a large sum which in this case exceeds the original cost of both systems, we think that the expenditure is under the jurisdiction of the City Council.

CONCLUSION.

It is, therefore, the opinion of this Department that the expenditure of this money under the statutes, and ordinance as adopted, is under the supervision of the City Council.

Very truly yours,

COVELL R. HEWITT  
Assistant Attorney-General.

APPROVED:

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ROY McKITTRICK  
Attorney-General.

CRH:EG