

CITIES OF THIRD CLASS: Power to contract for sewers outside of corporate limits.

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September 16, 1935.



Mr. Fred F. Wesner,
City Counselor,
Sedalia, Missouri.

Dear Sir:

This will acknowledge receipt of your inquiry which is as follows:

"As City Counselor I have been requested to give an opinion as to whether or not the State of Missouri could connect its State Fair Grounds Sewerage system to the Southwest Sewerage District of the City of Sedalia by authority of proper ordinance and contract with the City of Sedalia.

"My understanding is that the State has its sewerage system at the Fair Grounds complete with the exception of disposal or incinerating plant for the final disposition of sewerage.

"This being true, at the present time sewerage from the Fair Grounds is thrown out upon the top of the earth and causes a very unsightly and filthy condition which I am told is very injurious to the public health of the citizens of Sedalia and the surrounding vicinity of the Fair Grounds, especially immediately after the holding of the annual fair.

"My understanding is that through the Director of the W. P. A., Mr. Green, Secy' of the Fair and the Commissioner of Agriculture of Missouri propose to carry out

this project as a W. P. A. project without cost to the City of Sedalia, provided the City of Sedalia can legally give the State the authority to connect to the city sewer at the proposed point, to-wit: 'The intersection of West Third Street with the Missouri Pacific Railroad Fairgrounds Spur'.

"I assume that if it is possible at all for the City to carry out its part of the proposed project that it would be necessary to pass an Ordinance authorizing the Mayor of the City of Sedalia and the Commissioner of Agriculture to enter into a suitable contract therefor. I have prepared such an ordinance and am handing you a copy of the same herewith.

"In writing you, I am assuming that your office should be equally as well interested in this matter as myself and I will appreciate any opinion or suggestion that you may have in the premises.

"For your information the sewerage district which it is proposed that the State connect to is a general Sewerage District within the City of Sedalia, constructed and paid for by tax-bills in the usual manner, the General Revenue Funds of the City, and operated and maintained by the General Revenue Funds of the City.

"For your further information I have expressed an opinion to the Council that it is my belief that in view of the fact that it is the State of Missouri that desires to make this connection and that in view of the fact that the proposed connection could be made upon the theory that it was for the general welfare and public health of the citizens of said City and the surrounding community at the Fair Grounds, that said proposed connection might upon this theory be authorized by the Council under proper contract and agreement as being a public health measure and a reasonable regulation.

"would appreciate your views in the matter at your most early convenience in view of the fact that the Council as well as Mr. Green, Secy' of the State Fair and Judge Monroe, Director of W. P. A., would like to arrive at some definite conclusion by next Tuesday, September 3rd."

You also attach a copy of a proposed ordinance of your city.

Replying thereto, Sedalia is a city of the third class. Section 6719, R. S. Mo. 1929, provides that such cities "may purchase, hold, lease, sell or otherwise dispose of any property, real or personal, it now owns or may hereafter acquire."

Section 6727 provides that the mayor shall communicate to the council such measures as may, in his opinion, tend to the improvement of the health, comfort, general prosperity, etc., of the city.

Section 6803 empowers the mayor and city council to enact ordinances they deem for "the good government of the city, the preservation of peace and good order, the benefit of trade and commerce, and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect," etc.

Section 6807 empowers the council, among other things, to "purchase or condemn and hold for the city, within or without the city limits, within ten miles therefrom, all necessary lands for hospital purposes, waterworks, sewer carriage and outfall, * * * and make regulations to secure the general health of the city."

Section 6822 provides for establishing four classes of sewers and defines the methods as to public sewers.

Section 6823 deals with district sewers, Section 6824 deals with joint sewers, and Section 6825 deals with private sewers.

Section 6824 provides that as to joint district sewers the cost of construction thereof, except such sum as the city directs by order to be paid by the city, "shall be assessed and paid in special tax bills against the property included in the joint sewer district," etc. It further provides that "the action

of the council creating the joint sewer district shall be conclusive as to the necessity therefor," etc.

Section 6868, inter alia, provides that the council "shall have the power to enact and make all such ordinances and rules, not inconsistent with the laws of the state, as may be expedient for maintaining the peace and good government and welfare of the city and its trade and commerce."

Section 6875 provides that sewers "partly in one or more districts and partly beyond the territorial boundaries of such city, as may be determined by ordinance" may be constructed.

Section 6883 provides that the cost of acquiring the right-of-way, "including the land for the erection and maintenance of disposal plants," shall be a lien on the lands.

Section 6885 provides that the cost of constructing such sewers shall be paid for by special tax bills.

In 1 Dillon on Municipal Corporations, (2 Ed.) Par. 196, it is said:

" * * * The establishment and maintenance of sewers and drains have been held matters of local and municipal concern, but construction of storm sewers extending beyond the municipal area into unincorporated territory, not concerning alone or specially the inhabitants or property owners of any one city or town, are state affairs."

In the case of Churchill v. Grants Pass, 70 Ore. 283, the court in speaking of the power of a municipal corporation beyond the city limits, stated the following, i. c. 288:

"That the construction of a railroad by the state or by a municipality is a public purpose seems to be settled by the reasoning of the court in *Olcott v. Supervisors*, 16 Wall 678 (21 L. Ed. 382). The reasoning in that case would seem to cover all cases of railroad construction by municipalities, whether wholly within the boundaries of such municipality or not, if the purpose

of such improvement is for the general welfare, convenience, health, or comfort of its citizens."

In the case of *Muir v. Murray City*, 55 Utah 368, the court had under consideration the authority of the city to construct power lines beyond the limits of the city and to sell power over such line supplying another city therewith, and held that such power existed. In that case the city borrowed money to construct said line and was sued for the same and recovery was had. The court said, l. c. 374:

"If it became necessary to furnish power, instead of payment in cash, as shown by the record in the present case, then it had the right to deliver that power at the point agreed upon in the contract, whether that point be within or without the city. In constructing its works and obtaining its power, it was its duty to pay due regard to the future, and provide for the probable necessities of a rapidly increasing population. In such case it could not but happen, as it did happen in the present case, that when the works were completed and put into operation the city found it had a large surplus of power over and above all present demands, or probable demands for many years to come."

The court there held that while cities are not organized primarily as profit-making concerns,

"yet when it is incidental, as in the instant case, to a proper exercise of its legitimate powers, the making of the enterprise a profitable one was highly commendable." (Citing a number of cases in support thereof.)

In the case of *Skinner's Ex'r. v. Hutton, et al.*, 33 Mo. 244, speaking of the powers of a city, the Missouri Supreme Court said, l. c. 249:

"In order, however, to settle the case finally, we add that the Legislature had power to authorize the City of Lagrange

to expend money upon the improvement of roads outside of the limits of the city."

In the case of Haeussler et al. v. City of St. Louis, 205 Mo. 656, the court considered the power of the City of St. Louis to issue bonds and use the proceeds thereof in constructing a municipal bridge across the Mississippi River for public use by railroads and vehicles of other kinds and pedestrians, and to buy or condemn land on either side of said river to be used in providing approaches to said bridge, and held that the city had such power, including the power to spend city money for that part of the project located outside of the city.

In the case of Land and Improvement Co. v. St. Louis, 257 Mo. 291, the court considered the validity of an ordinance providing for the construction of a district sewer to drain lands lying within and without the city limits, and held that the city had authority to so construct. At page 301 the court says:

"It has been uniformly held that the action of the city legislature in pursuance of charter powers, in establishing a district to be benefited by sewers or other public improvements so as to justify a special assessment against the property lying within the district, is conclusive, in the absence of any evidence that it was procured by fraud or proof that it is manifestly arbitrary or unreasonable, or that the assessment is palpably unjust and oppressive (Citing a list of cases.)"

Further:

"The record in this case discloses that the watershed served by this sewer, laid partly outside the city limits, was traversed by the south fork of Gingrass Creek, which was a small stream practically dry except in wet weather. No sewer could be built of insufficient capacity to carry off the accumulation and drainage of this stream, without exposing the property owners to the dangers of an overflow of the creek at every rainfall.

Necessarily the sewer, in order to accomplish its purpose, must be built big enough to enclose and carry off the polluted waters of Gingrass Creek. The existence of the stream was due to the topography of the watersheds, and that fact made it the duty of the city to provide a sewer adequate to the demands created by natural conditions in the locality to be drained. The lot purchased by the plaintiff was located in such surroundings as to make it a servient estate and was specially benefited in proportion to the protection which the sewer, thus constructed, gave it against the damage from the flowage from higher ground."

In the case of Joplin Consolidated Mining Co. v. City of Joplin, 124 Mo. 129, considering the question of the power of cities with reference to sewage, the court said, l. c. 138:

"The question whether the contemplated use of the property is really a public use is a judicial question, and will be determined by the courts without any regard to any assertion of the city council that the proposed use is a public use. (Citing cases.) But it is for the city council to determine the question whether the public welfare requires or makes the sewer necessary or expedient. With that question the courts have nothing to do, for the law has confided it to the judgment of the city council."

It will be seen from the above noted authorities that cities have rather a wide field of authorized action extending beyond the limits of the city when the welfare of the city and the people therein are directly concerned, and that the proper party to express the will of the people of the city thereon is the city council. Under the statutes above quoted and referred to, cities of the third class in Missouri have the express authority delegated to them to enact such ordinances as they consider to be for "the good government of the city, the preservation of peace and good order, the benefit of trade and commerce, and the health of the inhabitants thereof, and such other ordinances, rules and regulations as may be deemed necessary to carry such powers into effect," and to procure land within ten

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miles of the city if they deem the same necessary for sewer carriage, and to make regulations to secure the general health of the city.

CONCLUSION

We are of the opinion that the City of Sedalia has the power and authority vested in it to enter into a contract whereby the sewer system of the State Fair Grounds will be connected up with the sewer system within said city, such contract to be spread upon the records of the city council and duly authorized and adopted by said city council.

Yours very truly,

DRAKE WATSON,
Assistant Attorney General.

APPROVED:

JOHN W. HOFFMAN, Jr.,
(Acting) Attorney General.

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