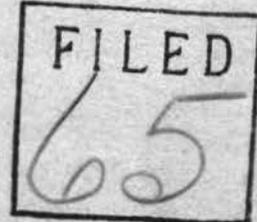


CITIES, TOWNS AND VILLAGES: Powers and Duties of Board of
BOARDS OF PUBLIC WORKS: Public Works in Cities, Towns
and Villages.

April 26, 1938

5-4



Mr. Walter L. Mulvaney
Rock Port, Missouri

Dear Sir:

This is to acknowledge receipt of your letter of April 14th, in which you request the opinion of this department. Your letter is as follows:

"The City of Rock Port is erecting a municipal power and light plant and distributing system, which will go into operation within a few weeks. Our city council wishes to appoint a board of public works, as provided by the Missouri statutes, but it is not clear as to the relation the board will have to the city council. Some of the questions arising are:

1. Will the board of public works have the power to execute contracts, or can the city be bound only by the signature of the mayor and clerk authorized by resolution of the council?
2. Will the board of public works have the power to issue checks or pay salaries of employees, or other expenses incurred in the operation of the plant, or do all bills have to be passed by the board and then the council, who orders the city clerk to issue city warrants?
3. Could a board of public works be limited in authority so as to have control of a power and light plant but not the city water works, by ordinance?

4. Does the council have any supervisory power over the board after they are appointed?"

The powers and duties and provisions of law with reference to Boards of Public Works are set forth in Section 7651 et seq., Article 31, Chapter 38, Revised Statutes 1929.

Section 7651 provides, in part:

"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 30,000 inhabitants, shall have power to erect or to acquire, by purchase or otherwise, waterworks, gas works, electric light and power plant, steam heating plant, etc."

and said Section 7651 further provides that the municipal corporations of the above classes may provide by ordinance for a board of public works to consist of four persons, electors of such 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.

Section 7654 provides that upon the establishment of a board of public works, by ordinance, such board shall have the power, and it shall be its duty to take charge of and exercise control over any 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 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 to or appertaining to such plant or plants.

Therefore, upon the creation of a board of public works under Section 7651 and the appointment and qualifications of the members of such board, the board has the power and it is its duty to take charge of and exercise control over all of the public utilities mentioned in Section 7654. In the absence of any further grant of powers to the board in the ordinance creating it, it would be limited to the powers as set forth in Section 7654, that is, it would have authority to take charge of and exercise control over all of the utilities owned by such city. Under the provisions of Section 7655 the common council of said city may grant certain other powers to the board of public works which powers are set forth in Section 7655 in the following language:

"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."

These additional powers which may be granted to the board of public works, by the council, by ordinance, are matters and things pertaining to the superintendence of public works, improvements and repairs constructed by authority of the common council or owned by the city looking to the successful operation of such utility by the board. With this brief outline of the statutes, with reference to the board of public works, we come to the questions asked by you in your letter.

1st Query: We do not think that the board of public works has the power and authority to execute all contracts and thereby bind the city. Section 7659, R. S. Mo. 1929, provides that all contracts shall be submitted to the common council for approval.

2nd Query: We think that the answer to your second query is found in Section 7657, R. S. Mo. 1929, which says:

"All bills of such board and all salaries of its employes shall be

April 26, 1938

allowed and paid in the same manner that bills and salaries of other officers and employes of such city are allowed and paid."

As all bills and salaries of the officers of the city are paid upon the approval of the town council, it is our opinion that the board of public works has no authority to issue checks and pay salaries and bills except such as are approved by the council of such city.

3rd Query: In answer to your third query, we are of the opinion that upon the creation of the board of public works, by ordinance, it is its duty to take charge of and exercise control over all of the municipally owned public utilities of such city, and it was not the intention of the legislature to permit the town council to delegate to the board of public works control over one of its public utilities and retain the control of the other public utilities in the hands of the town council, in other words, the board would have control over all of them or none of them. It must be remembered that the board of public works is a board of limited powers and not a governing body of such city and has only such powers as may be given to it at the time of its creation under Section 7651 and Section 7654 and the additional powers of superintendence that may be granted to it by the town council under Section 7655.

In answer to your fourth query, as to whether or not the council has supervisory power over the board after the board is appointed, is question to our minds too general for us to render an opinion. However, we might say that matters pertaining to the operation of the public utilities mentioned above may be delegated to the board of public works by the town council and so long as the ordinances are not repealed which, of course, the council may do at any time, the powers given to the board of public works must be exercised by it without hindrance of the town council.

It will be noted that a great many of the sections of the statutes, with reference to the board of public works, have the following clauses therein, namely, Section 7656, "as provided by ordinances", Section 7658, "as may be provided by ordinances", Section 7659, "under such restrictions and regulations as may be provided by ordinance",

Mr. Walter L. Mulvaney

-5-

April 26, 1938

Section 7660, "subject to the ordinance of such city, town or village", so it will be seen that under these sections of the statutes the city may delegate to the board of public works broad powers or it may circumscribe its duties and powers within well defined degrees.

We find it difficult to outline, in this opinion, the powers and duties of the board and the limitations which it may have without examining the ordinances of such city and reading same in connection with the statutes.

Respectfully submitted,

COVELL R. HEWITT
Assistant Attorney General

APPROVED:

J. E. TAYLOR
(Acting) Attorney General

CRH:LB