

SEWER DISTRICTS: (1) Not necessary to secure permit from bd. of plumbing supervisors before connecting sewer in incorporated sewer district in incorporated town where town has satisfactory plumbing code. (2) Necessary to secure permit from board in unincorporated area. (3) Sewer district may ~~not~~ require its own permit and charge fees; trustees not liable where drain layer acting independently excavates public road without excavation permit.

May 9, 1939



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Dear Sir:

We wish to acknowledge your recent request for an opinion wherein you state as follows:

"As County Counselor of St. Louis County I have been requested to secure an opinion from you concerning the jurisdiction of the County Court as a Board of plumbing inspectors and supervisors over sewer connections in sewer districts organized under the provisions of the act of the 1933-34 session, page 119.

In St. Louis County a drain layer or plumber, desiring to connect a sewer, is required to take out a permit for which a fee is charged, under certain established rules and regulations of the plumbing board, authorized by Secs. 14864-5 R. S. 1929. Before he can secure this permit he is required to secure an excavation permit from the County Clerk as provided in Chap. 42, Art. 7, R. S. 1929.

Certain newly organized Sewer Districts created under the 1933-34 acts have refused to recognize sewer connection permits from the board of plumbing supervisors and inspectors, have insisted that permits be obtained from the Trustees of the District be-

fore permitting connections to their sewers and have issued connection permits to drain layers having no permit from the board of plumbing supervisors. Furthermore, they have permitted excavations in public roads without requiring the production of a permit from the County Clerk. Some of these districts are in rural areas, others in incorporated towns, and some partly in rural and partly in incorporated areas.

The following questions have arisen:

1. Is it necessary to secure a permit from the board of plumbing supervisors and inspectors before connecting a sewer in an incorporated sewer district:
 - a. when the sewer is in an incorporated town
 - b. when the sewer is in unincorporated area
2. If so, has the sewer district the right to require its own permit and charge a fee for the same connection?
3. Are the trustees of a sewer district who permit a drain layer to excavate a public road for a sewer connection, without requiring the production of an excavation permit, subject to prosecution under Sec. 8005 R. S. 1929?"

Section 14853 of Laws of Missouri 1931 p. 287 provides for plumbing inspectors in counties containing 200,000 inhabitants or more and less than 400,000, as follows:

"In all counties in this state, which now contain or may hereafter contain a popu-

lation of 200,000 inhabitants or more, and less than 400,000 inhabitants, according to the last federal decennial census, all plumbing and drains shall be hereafter installed in accordance with the standard inspections, requirements and provisions hereinafter set out, and no person shall now or hereafter engage or work at the business of plumbing in said counties except he, she, it or they first receive a certificate in accordance with the provisions of this law or a certificate authorizing such person or persons, firm, corporation or association to do plumbing in this state."

Thereafter follows a number of sections, 14854 to 14871, inclusive, R. S. Mo. 1929, which set out in detail the specifications and general regulations for various kinds of plumbing and drains.

Section 14864 R. S. Mo. 1929 creates a board of plumbing inspectors or supervisors with various duties and authority and reads in part as follows:

"(a) The county court of every county herein described are created and made a board of plumbing inspectors and supervisors. There shall be appointed by said board of plumbing inspectors and supervisors such inspectors as shall be necessary, compensation of such inspectors to be fixed by said board, such inspectors in each case to be a duly licensed plumber. It shall be the duty of said board of plumbing inspectors and supervisors to inspect all plumbing, to grant licenses for the installation thereof, and certifies of inspection and to report all violations of the provisions of this law to the prosecuting attorney of the several counties.

(b) The said board of plumbing inspectors

and supervisors shall have the authority to make such rules and regulations, not inconsistent with the provisions hereof, for the construction, installation and inspection of plumbing as said board shall deem necessary for the preservation and improvement of the public health. It shall be the duty of the prosecuting attorney of the several counties in the state to prosecute all violations thereof.

(e) Upon payment of the fees aforesaid and upon completion of the tests and inspections herein provided, there shall be issued by the board of plumbing inspectors and supervisors a certificate of inspection, which certificate shall be prima facie evidence that said plumbing or drains conform to the requirements of this law. (Laws 1921, p. 558, Sec. 12)"

Section 14865 R. S. No. 1929 sets out a number of general provisions in part as follows:

"No person, company or corporation shall be permitted to install any plumbing in any building in the county, run water into any house or premises or a sewer from any building, lot or premises without first having been duly licensed by proper authority to do such work.

(c) Where a water service or sewer connections are to be run into a premise only and no plumbing is installed in the building supplied or drained by such service or sewer, a permit shall first be obtained to do such work; a fee of \$1.50 shall be charged for such permit."

It is therefore provided that under Section 14865, supra, no person, firm or corporation is permitted to install any plumbing or make necessary sewer connections without being duly licensed and a permit obtained.

Laws of Missouri, 1931, Section 14866, page 288, provides for the appointment by the county court of a board of plumbing inspectors consisting of a master plumber, a journeyman plumber and one person who possesses the qualifications required by law for a county health officer.

Section 14867, R. S. Mo. 1929, provides for the holding of examinations by the board of plumbing inspectors to test applicants as to their practical knowledge of plumbing, sewerage, house drainage and ventilation, and if the board is satisfied of the competency of such applicants, a certificate is issued to them upon the payment of a fee.

Section 14871, R. S. Mo. 1929 declares when additional regulations are permissible, as follows:

"Nothing in this law shall be construed to prevent or prohibit any incorporated city, town or village from making like, further and additional regulations not in conflict with the provisions of this law. In the event that the ordinances or laws of said incorporated cities, towns or villages should conflict with this law, then this law shall be supreme and shall be the rule of construction on all matters pertaining to any ordinances of said cities, towns or villages."

A complete and comprehensive scheme is thus set up for regulating the practice of plumbing in counties of 200,000 inhabitants or more and less than 400,000.

The 57th General Assembly, at its extra session, Laws of Mo. 1933-1934, Sections 1-41, inclusive, pages 119-136, enacted a law providing for the establishment of sewer districts in counties of 150,000 to 400,000 inhabitants.

You state that certain newly organized sewer districts created under the above act have refused to recognize sewer connection permits from the board of plumbing supervisors and inspectors insisting that permits be obtained from trustees of the district before permitting connections to their sewers and have issued connection permits to drainlayers having no permit from the board of plumbing supervisors.

Such condition has evidently been brought about by reason of Section 29 of the above act, which provides that:

"The sewer district through its Board of Trustees may promulgate reasonable rules and regulations concerning the construction, maintenance and use of the sewer system or systems constructed and/or maintained by the district."

Nowhere throughout the above act do we find a complete and comprehensive scheme for the regulation of plumbing as provided for under Sections 14853 to 14871, supra. It is merely that the Board of Trustees may promulgate reasonable rules and regulations. Is it to be said that the latter act, being a special one, must prevail over the general act, and that therefore the Legislature which created said sewer districts for the preservation of public health were willing to permit the trustees who were not necessarily chosen for their knowledge about sewer matters to supersede the authority of men trained and particularly qualified for the work.

There are no cases which shed any light on the question presented. There have been two cases which construe the sewer district law of 1934, *State ex rel Webster Groves vs. Smith*, 87 S. W. (2d) 147 and *State ex rel Webster Groves vs. Smith*, 115 S. W. (2d) 816. However, neither of these cases touch on the matters before us for consideration. We must, therefore, necessarily resort to statutory construction, bearing in mind the cardinal principle that in construing statutes they should, if possible, be construed with a view of effectuating the legislative purpose. *State ex rel Smith* 67 S. W. (2d) 50, l.c. 56.

At this point, we find ourselves presented with the following situation as it relates to plumbing regulation and inspection. The 1934 act dealing with the subject in general and comprehensive terms (Section 29 "reasonable rules and regulations") and the sections as they appear in the Revised Statutes of Missouri 1929, and as amended in 1931 (Sections 14854 to 14871) dealing with the same subject in a more minute and definite manner. The court in the case of *Bishop vs. Musik Plating Works* 3 S. W. (2d) 256, l.c. 259, in holding that where such a situation presents itself the two should be read together and harmonized, if possible, said:

"When one statute deals with a subject in general and comprehensive terms, and another deals with a part of the same subject in a more minute and definite manner, the two should be read together, and harmonized, if possible. * * * *
There is no ambiguity in either statute, and no repugnancy between them; and no reason appears why the plain provisions of section * * *, should be rejected because of the equally plain provisions of section * * * * * ."

We have carefully read both acts and find no repugnancy between them. They lend themselves readily to harmony when read together, and therefore we will take up your respective questions.

(1) Is it necessary to secure a permit from the board of plumbing supervisors and inspectors before connecting a sewer in an incorporated sewer district when the sewer is in an incorporated town?

Section 14853, supra, provides that:

" * * all plumbing and drains shall be hereafter installed in accordance with the standard inspections, requirements and provisions hereinafter set out."

Section 14865f, supra, provides that:

"The plumbing laws of all incorporated places within the county may have a plumbing code equal to this code. Where no such laws exist, all plumbing in such towns shall be duly inspected by the county inspector."

We anticipate that the argument will be advanced that a

sewer district is included within the meaning of "incorporated places", and therefore that the plumbing in the sewer district is not subject to inspection by the county inspector. This might be true were it not for the words "in such towns", which indicates that it was towns that was meant by incorporated places and not sewer districts.

We are, therefore, of the opinion that it is not necessary to secure a permit from the board of plumbing supervisors and inspectors before connecting a sewer in an incorporated sewer district in an incorporated town, where said town has a plumbing code equal to that set up by the board of plumbing supervisors and inspectors,

(2) When the sewer is in an unincorporated area?

We are of the opinion that it is necessary to secure a permit from the board of plumbing supervisors and inspectors before connecting a sewer in an incorporated sewer district in an unincorporated area.

II. (a)

Your second question is whether the sewer district has the right to require its own permit and charge a fee for the same connection.

Laws of Mo. 1933-34, Extra Session, Section 29, p. 132, provides that:

"The sewer district through its Board of Trustees may promulgate reasonable rules and regulations concerning the construction, maintenance and use of the sewer system or systems constructed and/or maintained by the district."

Laws of Mo. 1933-34, Extra Session, Section 30, p. 132, provides in part that:

"It shall be the duty of such Board of Trustees to supervise the maintenance of such sewer system constructed under its supervision, or as may hereafter under property (proper)

authority be placed under its supervision, and to see that sewer system or systems be maintained in good condition."

The board of trustees are charged with the duty of supervising the maintenance of the sewer system and keeping it in good condition. In order to enable them to effectuate this duty, they are given the power to enact reasonable rules and regulations.

In the case of *Rexroth v. Holloway*, 45 Ind. App. 36, 90 N. E. 87, 1. c. 88, the court in defining the term "reasonable" said:

"'Reasonable' is a term difficult of definition, and usually it must be considered with the facts of the particular controversy in determining its force and latitude. In *Re Niece vs. Schreiber* (D.C.) 123 Fed. 987. It is sometimes used to express that which is appropriate or necessary. *Leaving vs. Union Etc. Co.* 42 Mo. 88, 97 Am. Dec. 320."

And, in the case of *Borough of Belmar vs. Prior*, 79 Atl. 1032, 1. c. 1033, 81 N. J. Law 254, the court in defining rules and regulations said:

"'A rule is a device in words and phrases for the control and direction of those who have something else given them to do.' *Taylor vs. Lambertville* 43 N. J. Eq. 107, 112, 10 Atl. 809, 811. A regulation is defined to be 'a rule of law by which some right is to be exercised.' *Donovan vs. Territory* 3 Wyo. 91, 94, 2 Pac. 532, 533."

The power to make rules and regulations imports a power to control and direct, and what is reasonable is to be determined in the particular case by that which is appropriate and necessary. Is it to be said that the legislature imposed a duty on the board of trustees to supervise and maintain the sewers in good condition but denied them the right of any control over the sewers? To so construe the statute would result in an absurdity.

Thus, in the case of *Marler vs. Marler's Estate*, 104 S. W. (2d) 733, l.c. 736, the court said:

"A statute will not be given a construction which will make it unreasonable or which will result in an absurdity. *Stack v. General Baking Company*, 283 Mo. 396, loc. cit, 410, 223 S. W. 89, and cases cited: *Johnston v. Ragan et al.*, 265 Mo. 420, 178 S. W. 159; *State v. Irvine*, 335 Mo. 261, 72 S. W. (2d) 96, 93 A. L. R. 232."

Furthermore, the court in the case of *Bull vs. McQuie* 119 S. W. (2d) 204, l.c. 207, has held that a sewer district has all the power essential and indispensable to its declared object and purpose.

"Albeit, as contended by the appellant, the sewer corporation is not invested with broad and general powers, none the less, the power it does possess is plenary, co-extensive with the area of the district, inclusive of the planned sewer system in its entirety as an indivisible unit. In short, the corporation has all the 'power essential and indispensable to the declared object and purpose of the corporation.'"

Obviously, the board of trustees of an incorporated sewer district have no control over their sewers unless they have the right to issue or deny permits to individuals or companies desiring to make connections to their sewers.

We are, therefore, of the opinion that an incorporated sewer district, through its board of trustees, may adopt rules and regulations requiring that a permit be secured from said board in order to make a sewer connection.

II. (b)

In order for the board of trustees to determine whether a proper sewer connection is made, it will be necessary that an inspection be made entailing an inspection cost to the district. The question arises whether the district may meet said cost by imposing a fee for the required permit.

32 C. J., Section 11, p. 936, states that:

"In order that an inspection law may be valid the fee imposed must be reasonable; it must have reference to the cost of service."

Although the above statement refers to an inspection "law", we are of the view that the same principle would be applicable to a "regulation", which is "a rule of law by which some right is to be exercised", (Borough of Belmar vs. Prior, supra).

We are of the opinion that an incorporated sewer district, through its board of trustees, may adopt a rule or regulation requiring the payment of a fee for a permit to make a sewer connection but that said fee must be reasonable and made with reference to the cost of the inspection service.

III.

Your third question is whether or not the trustees of a sewer district who permit a drain layer to excavate a public road for a sewer connection without the production of an excavation permit are subject to prosecution under Section 8005 R. S. Mo. 1929. Section 7998 R. S. Mo. 1929 provides that:

"It shall be unlawful in any county in this state which now has or which may hereafter have a population of 100,000 or more for any person, firm, association or corporation to excavate, or cause any excavation to be made, in any county road without first having had and obtained a permit therefor and given a bond or made a cash deposit as hereinafter provided."

In 11 C. J. at page 36, the word "cause" is defined as meaning:

"Philosophically speaking, the sum of all the antecedents of any event constitutes its cause. Ordinarily, however, each separate antecedent of an event is considered as a cause for such event, provided, however, that the event could not have happened except for such antecedent; in this case, that which supplies a motive, decides action, or constitutes the reason for anything done; that which produces or effects a result, or from which anything proceeds, and without which it would not exist; that which produces an effect, or which brings a thing to be; that condition which determines the final result; that on which a thing under given circumstances follows."

Section 8005 R. S. Mo. 1929 provides that:

"Any person violating any provision of this article or failing to comply therewith shall, upon conviction thereof, be deemed guilty of a misdemeanor."

From the foregoing, we are of the opinion that if a drain layer acting as the servant and employee of the trustees of the sewer district undertakes to excavate a public road for a sewer connection without obtaining a permit, then the trustees would be liable under Section 8005, supra. However, if said drain layer acting independently of the trustees of the sewer district undertakes to excavate a public road for sewer connections without obtaining a permit, we are of the opinion that said trustees would not be liable under Section 8005, supra, since there is no duty imposed upon them by law to ascertain if a drain layer has obtained an excavation permit.

Respectfully submitted,

APPROVED:

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