

APPROPRIATIONS: State not obligated to reimburse City of Mount Vernon on sewage disposal plant.

November 10, 1949



Honorable Merideth Garten
Representative, Lawrence County
State Legislature
Pierce City, Missouri

Dear Sir:

We have received your request for an opinion of this Department, which request is as follows:

"Can you please give me advice as to whether the state can legally reimburse the city in accordance with the enclosed letter."

The letter enclosed reads as follows:

"As you no doubt know, the City of Mt. Vernon and the Department of Public Health and Welfare, did, on November, 30, 1948, enter into a contract agreement to construct a sewage disposal plant for the joint use of the City of Mt. Vernon, Missouri and the Missouri State Sanitorium. Subsequent to this agreement the City and the Health Department entered into contract with Don P. Pray, Inc., of Monett to construct the disposal plant at the approximate cost of \$130.00.00., the State Legislature having appropriated \$65000.00 for the State's portion of the Cost of construction. Due to unforeseen and unexpected expense occasioned by changes in construction recommended by the State's Engineers the cost of construction has exceeded the amount set forth in the contract in the sum of \$2031.94.

"In order to get the plant into immediate operation, the City of Mt. Vernon has authorized Mr. Pray to proceed with construction according to plan and subsequent change orders.

"It will be necessary therefore for the City to ask the Legislature for a deficiency appropriation to reimburse it for the monies advanced in behalf of the State in payment of the excess cost of construction."

There is also enclosed a statement of Don P. Pray, Inc., General Contractor, which contains the following:

"In accordance with the agreement with the City Council to reinstate the following items that were eliminated on Change Order #8 due to lack of money by the State:"

This statement indicates that the total increased cost is \$2,031.94, and the City of Mount Vernon wishes to obtain an appropriation from the state for one-half of that amount.

The Sixty-fourth General Assembly appropriated the sum of \$65,000.00, for the state's one-half share of the cost of construction of a sewage disposal plant at Mount Vernon, Missouri. (Laws of Missouri, 1947, Volume II, page 124.)

Subsequently, the State of Missouri, through the Division of Health of the Department of Public Health and Welfare, entered into a contract with the City of Mount Vernon to provide for the joint construction of the sewage disposal plant. Paragraph 3 of that contract reads as follows:

"In the event the total cost of construction of said sewage disposal plant is in excess of One Hundred Thirty Thousand Dollars (\$130,000), the City agrees to pay said excess amount without contribution from the Division."

(Underscoring ours.)

Thus, the city expressly undertook to pay any costs of the plant in excess of \$130,000.00, and the state's obligation, according to the contract with the city agreed to, was to be only \$65,000.00. In view of this provision of the contract, the state certainly is under no legal obligation to reimburse the city for an excess expenditure.

However, should the General Assembly see fit to reimburse the city, there would appear to be no limitation on their power which would prevent their doing so.

CONCLUSION.

Therefore, it is the opinion of this Department that the State of Missouri is under no legal obligation to reimburse the City of Mount Vernon for costs of a sewage disposal plant, which costs the city agreed to pay in excess of a specified amount, although there is no constitutional provision which prevents reimbursement by the General Assembly.

Respectfully submitted,

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Assistant Attorney General

APPROVED:

J. E. TAYLOR
Attorney General