

SEWER DISTRICTS IN
ST LOUIS COUNTY:

The extension of a sewer district in St. Louis County can only be into a "contiguous" area, and that by "contiguous" is meant an area which is "adjacent" or lying immediately next to and adjoining.

JOHN M. DALTON
XXXXXXXXXXXX

May 4, 1953



J.C. Johnsen
XXXXXXX

Honorable L. E. Ordelleide, Director
Bureau of Public Health Engineering
Division of Health
Jefferson City, Missouri

Dear Sir:

This department is in receipt of your recent request for an official opinion. You thus state your request:

"The request for an opinion of the Attorney-General which you referred to in your letter of February 9, 1953 regarding the extension of the Affton Sanitary Sewer District in St. Louis County is as follows:

"Can the Affton Sanitary Sewer District extend its limits by condemning a corridor up stream to a developed area and then incorporate the developed area into the sewer district? Can they also extend a corridor down stream from the present district limits and incorporate built-up areas as they come to them? Such a plan of expansion would result in several sewered areas connected and drained through the corridors to the river DePeres. The attorney for the sewer district has informed the Division of Health that such a plan, in his opinion, was legal through the provisions of House Bill 207 which was passed and became law during the last legislative period. Such a plan would result in a desirable system of trunk sewers serving the South St. Louis County area. There was some doubt, however, in our minds that such a procedure was within the intent of the Law. We would appreciate an opinion on this matter as the same problem is arising in the Moline Creek water shed in North St. Louis County."

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We note that the Affton Sanitary Sewer District is located in St. Louis County.

Chapter 249, RSMo 1949, was a statement of the law governing sewer districts in St. Louis County and in Jackson County. That portion of the above chapter relating to sewer districts in St. Louis County is found in Section 249.010 through Section 249.420, RSMo 1949. Section 249.010 states in part:

"Whenever the construction and maintenance of a system of sewers for any contiguous area in the state of Missouri shall become necessary for the preservation of the public health or public welfare or will be of public utility or benefit, if any such area shall lie within any county in the state of Missouri now, or hereafter having a population of not less than one hundred and fifty thousand, nor more than four hundred thousand inhabitants, said area may be established and incorporated as a sewer district under this act in the manner following, to wit: * * *"

(Emphasis ours)

Senate Bill No. 207 (to which you refer as House Bill No. 207) repeals Section 249.040, 249.060, 249.100, 249.140, 249.150, 249.280, 249.290 and 249.400 of Chapter 249, and makes twelve new sections relating to the same subject matter. However, Section 249.010, supra, is not repealed by Senate Bill No. 207, and it will be noted that it makes Chapter 249 applicable only to counties having a population of not less than one hundred and fifty thousand and not more than four hundred thousand.

We now direct attention to Section 249.020 (which likewise was not affected by Senate Bill No. 207). That section reads:

"The last preceding federal census shall be used as a basis and for the purpose of ascertaining and determining the population of the counties that may come within the provisions of sections 249.010 to 249.420."

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We now note that, according to the last decennial census, the population of St. Louis County is in excess of four hundred thousand, being in fact four hundred six thousand, three hundred forty-nine. This fact would, it would appear, remove St. Louis County from the application of Chapter 249, since the county has passed outside the population range fixed by Section 249.010, supra.

In this connection we note that this fact has been recognized by the 67th General Assembly of Missouri, now in session, and that steps have been taken to bring St. Louis County back within the confines of Chapter 249 by the introduction of Senate Bill No. 61 which provides, in part, for the repeal of Section 249.010, supra, and its re-enactment, which re-enactment would change the four hundred thousand population figure contained in that section to five hundred thousand. This bill has been enacted into law and was signed by the Governor of Missouri on April 21, 1953. It will become effective ninety days after the final adjournment of the Legislature, which will make the effective date the latter part of August, 1953..

However, at this time, as noted above, St. Louis County has passed beyond the confines of Chapter 249, and Senate Bill No. 61, which will bring St. Louis County back within those confines, has not yet become effective. In view of this situation, the question arises as to the legal status of Affton Sanitary Sewer District during this interim period. However, we do not believe that it is necessary for us to go into that question here, because we have concluded, by a process of reasoning which we will shortly disclose, that it would be contrary to law for the Affton Sanitary Sewer District to make the extension contemplated by your letter even if its present legal status was such that it could continue to function in all respects as it had been doing before a population increase in St. Louis County moved that county out of the population bracket contemplated by the law under which the Affton Sanitary Sewer District was organized and has functioned. As stated above, we do not here decide whether the population change has or has not affected the functional status of the Affton Sanitary Sewer District, because it is not necessary for us to do so in order to decide the question which you submit. Let us now proceed to examine the matter of the proposed extension of the Affton Sanitary Sewer District.

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It appears from your letter that the Affton Sanitary Sewer District is an established district, and that in this proposed action it simply seeks to extend the boundaries of its already established district.

Section 249.132, (Vernon's 1949 Annotated Missouri Statutes, Cumulative Annual Pocket Part), (Section 249.100, Laws of Missouri, 1951, p. 630), states in numbered paragraphs 1 and 2:

"1. Whenever any sewer district shall have been organized as provided by sections 249.010 to 249.420, and it shall appear necessary, convenient or advisable to extend the boundaries of such district for the purpose of including therein a contiguous area which could be efficiently served by the sewer system of such district, or by reasonable modifications, extensions, or improvements thereof, the boundaries of such district may be extended in the following manner; provided that such extension shall not include any territory within the boundaries of any other sewer district.

"2. The trustees of such district may, and shall upon a petition therefor, signed by twenty-five or more persons residing within such district and owning property therein which is liable for assessment for the sewers constructed therein, file with the circuit court having jurisdiction of such district a petition setting forth the reason or necessity for extending the boundaries of such district; the boundary lines of the proposed extension and a request for the appointment of a sanitary engineer, with duties as herein provided, and a prayer for such further action as may be necessary to determine the question as to whether the boundaries of such district should be extended."

It will be noted that by paragraph 1, supra, an established sewer district may, subject to the conditions and procedure set forth in paragraph 2, supra, extend its boundaries, subject to following certain procedure set forth in the remainder of the section and with which we are not here concerned. It will be

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noted, however, that this extension is "for the purpose of including therein a contiguous area * * *." We believe that the clear implication of the above is that such an extension may not be made if the area or areas proposed to be included are not "contiguous."

Let us therefore determine whether your proposed extension conforms to that portion (paragraph 1) of Section 249.132, supra, which states that the extension of a sewer district can be made of a "contiguous" area or areas, subject to paragraph 2, supra, of the above section. In other words, is the area which you propose to join to the Affton Sewer District contiguous to the Affton Sewer District?

On this point, in your letter, you state:

"Can the Affton Sanitary Sewer District extend its limits by condemning a corridor up stream to a developed area and then incorporate the developed area into the sewer district? Can they also extend a corridor down stream from the present district limits and incorporate built-up areas as they come to them? Such a plan of expansion would result in several sewer areas connected and drained through the corridors to the river DePeres."

You do not state the width or length of these "corridors", but we assume that they are relatively narrow areas extending for an appreciable distance, not populated, and used simply as connectors between populated areas which will be served by the sewer district. Under these circumstances can it be said that the areas which it is proposed shall be included in the Affton Sewer District are "contiguous" to the Affton Sewer District?

In the case of Bolen Coal Company v. Ryan, 48 Mo. App. 512, the court held that "contiguous" means to touch or to be in actual contact, and that where three lots were separated from five other lots by an alley, that they were not "contiguous" lots.

In the Case of Bulger v. Robertson, 50 Mo. App. 499, the court held that "contiguous lots" meant lots which were adjacent to each other.

In the case of Stamm Electric Company v. Hamilton-Brown Shoe Company, 165 S.W. 2d 437, 1.c. 440, the court stated:

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"While the word 'contiguous' is a relative term and may have a variety of meanings depending upon the sense in which it is used (17 C.J.S. page 178; 9 Words and Phrases, Perm. Ed., page 90), we have no doubt that in the statute now under consideration it has been used in its primary sense as implying actual contact or connection. For the statute to have application, mere close proximity is consequently not enough, but on the contrary, there must be an actual joining or touching of the lots in order for them to be contiguous. Such is the usual and ordinary meaning of the term; and a different meaning should therefore not be attributed to it unless the context in which it appears, the nature of the subject under consideration, and the ultimate purpose to be served should all indicate (which they do not) that it was purposely employed in the particular instance as connoting mere nearness or adjacency without the necessity for actual contact."

In the case of *Hauber v. Gentry*, 215 S.W. 2d 754, 1.c. 758, the court held that:

"Contiguous properly applies to objects which touch along a considerable part of the whole of one side: as, a row of contiguous buildings, a wood contiguous to the plain."

In the case of *State v. North Kansas City*, 228 S.W. 2d 762, 1.c. 773 and 774, the court stated:

"Contiguity. It is contended that relator's proposed annexation area is not contiguous to its present area. Relator's present north city limits, as defined in its charter is the center line of the river. That center line is the northern boundary of Jackson County, and the southern boundary of Clay County, R.S. Mo. 1939, Sec. 13560, 13620, Mo. R.S.A. The area in Clay County described in relator's charter amendment is contiguous to relator's present northern boundaries

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and the contiguity is not broken by the Missouri River. McQuillin Municipal Corporations, 3rd Ed. Vol. 2, p. 314, Sec. 7.20; Vestal v. Little Rock, 54 Ark. 321, 15 S.W. 891; Vogel v. Little Rock, 54 Ark. 335, 15 S.W. 836. It is stated that at one point along the west side of respondent, the relator's proposed annexation area is not over 200 feet wide. But that does not render the annexation void, nor break the contiguity. Sharp v. City of Oklahoma City, 181 Okl. 425, 74 P. 2d 383; City of Wichita Falls v. Bowen, 143 Tex. 45, 182 S.W. 2d 695, 154 A.L.R. 1434; Lefler v. City of Dallas, Tex. Civ. App., 177 S.W. 2d 231; McQuillin Municipal Corporations, 3rd Ed. Vol. 2, p. 312.

"Several tracts may be annexed as being contiguous if one tract is contiguous to the annexing municipality and the other tracts are contiguous to that tract and each other. In any event, relator's 'Northeast Industrial Area', lying in the northeastern portion of relator and directly across the river from the 'southeast farm area' is conceded by respondent and intervenors to be contiguous to that 'southeast farm area'. It is held in Missouri that it does not affect the contiguity of the land proposed to be annexed nor impair the validity of the proposed annexation that a city in one county proposed to annex a contiguous area located in an adjoining county. Schildnecht et al. v. City of Joplin, 226 Mo. App. 47, 41 S.W. 2d 590, 595. We approve that ruling. We hold that the proposed annexation area of relator is contiguous to its present area."

In view of the above holdings we do not believe that the proposed action by the Affton Sewer District contemplates an extension into and of a "contiguous" area or areas; does not comply with paragraph 1 of Section 249.132, supra, and is, therefore, prohibited.

It would appear to have been the legislative intent that sewer districts be in a relatively compact body, not tenuous and composed of areas connected by unpopulated districts

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narrow in area. It would appear that there are sound, practical reasons for this.

CONCLUSION

It is the opinion of this department that the extension of a sewer district in St. Louis County can only be into a "contiguous" area, and that by "contiguous" is meant an area which is "adjacent" or lying immediately next to and adjoining.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mr. Hugh P. Williamson.

Yours very truly,

JOHN M. DALTON
Attorney General

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