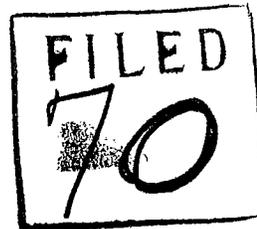


CITY:
BOARD OF CURATORS:
SEWER SYSTEM:
WATER SYSTEM:
UNIVERSITY OF MISSOURI:
ROLLA SCHOOL OF MINES AND
METALLURGY:

The City of Columbia may exact a reasonable charge from The Curators of the University of Missouri for the use of the Columbia sewerage system by the University of Missouri, said city may refuse to permit the University to use the City's sewerage system if reasonable charges made therefor are not paid. The foregoing is applicable to the City of Rolla and the School of Mines and Metallurgy.

.....
August 25, 1954

Honorable Paul M. Peterson
Attorney for
The Curators of the University
of Missouri
Columbia, Missouri



Dear Mr. Peterson:

By letter dated July 20, 1954, you requested an official opinion as follows:

"Request is hereby made by the Curators of the University of Missouri for an opinion of your office based upon the following facts:

"1. The Curators of the University of Missouri is a public corporation organized under the provisions of Sec. 172.020 RSMo 1949.

"2. The City of Columbia, Missouri is a constitutional charter city.

"3. Pursuant to Chapter 250 RSMo 1949 an election was called and the issuance of \$1,300,000 revenue bonds was authorized for the purpose of extending and improving the city sewer system.

"4. The City proposes to enact an ordinance fixing a charge upon all persons and corporations, including The Curators of the University of Missouri, using the city sewer system. The charge will be based primarily upon the amount of water metered to the user, making allowances upon an estimated basis for the water metered to the user which will not be turned into the city sewers. The fee or charge will be uniform upon all users

Honorable Paul M. Peterson:

of the sewer system, but the amount of credit that may be given for water which it is established will not be turned into the city sewers will vary in the case of various users.

"5. The proposed ordinance will provide that in those cases where water is obtained from sources other than the city water supply, or where a part of the water is obtained from sources other than the city, the user shall furnish records showing the amount of water used from such other sources, and the charge will then be made to such user in the same method as where all of the water is furnished by the city. The rates charged in such cases will be the same as the rates charged where the city furnishes all of the water on which the sewer charge is based.

"6. In all cases, the charges for the use of the sewers will be graduated upon the number of cubic feet estimated to be turned into the sewers by the user.

"7. The major portion of the water used by the University of Missouri is furnished from wells owned and operated by the University. A small portion of the water used by the University is purchased from the City of Columbia and metered to it as to other users. It is possible to meter the water pumped from the University wells for use by the University. The amount of water turned into the sewers by the University can only be estimated taking into consideration the various uses of water by the University where the water is not turned into the public sewers.

"8. The Curators of the University of Missouri has, since the establishment of the city sewer system, used the city sewers exclusively for the disposition of the sewage of the University, and no charge

Honorable Paul M. Peterson:

has heretofore been made upon it for the use of the city sewer system.

"The Curators of the University of Missouri request your opinion as to whether the City of Columbia may, in the manner above set out, legally charge and collect from it reasonable charges for its use of the city sewers and whether the city may refuse The Curators of the University of Missouri the right to use the city sewer system if said charges are not paid.

"The City of Rolla, a city of the fourth class created under general law, has authorized the issuance of \$300,000 in revenue bonds for the construction of a new sewer system in that city, and proposes under procedure similar to that outlined above to charge The Curators of the University of Missouri a fee for the use of the city sewers by the School of Mines and Metallurgy located at Rolla.

"It is requested that your opinion cover the legal right of the City of Rolla to make charges against The Curators of the University of Missouri for use of the Rolla sewer system and its right to refuse The Curators of the University of Missouri the right to use the city sewer system if said charges are not paid."

All statutory citations herein are RSMo, Cumulative Supplement, 1953, unless otherwise specified.

Section 250.010 authorizes cities to extend and improve their sewer systems. Said section reads:

"1. In addition to all powers granted by law and now possessed by cities, towns and villages in this state for the protection of the public health, any city, town or village, whether organized under the general law or by special charter or constitutional charter, and any sewer district organized under chapter 249, RSMo, as that chapter now exists, or as it may be amended, is

Honorable Paul M. Peterson:

hereby authorized to acquire, construct, improve or extend and to maintain and operate a sewerage system and to provide funds for the payment of the cost of such acquisition, construction, improvement or extension and operation as hereinafter provided. Such sewerage system may be constructed and operated either within or without the corporate boundaries of any such city, town or village or sewer district.

"2. When used in this chapter the term 'sewerage system' shall mean and include any or all of the following:

"(1) Sewerage systems and sewerage treatment plants, with all appurtenances necessary, useful, and convenient for the collection, treatment, purification and disposal in a sanitary manner of the liquid and solid waste, sewage, and domestic and industrial waste of any such municipality; and

"(2) Shall include combined storm water and sanitary systems;

"(3) The term shall also mean and include the construction of such storm water sewers as, in the judgment of the governing body of any such city, town or village or sewer district, may be necessary or desirable in order to relieve sewers carrying sanitary and storm water loads of undue loads or in order to permit the efficient operation of any such sanitary sewers for the collection, treatment and disposal of sewage and domestic or industrial waste including combined storms and sanitary sewerage system."

Chapter 250 further provides for issuance of revenue bonds to defray the cost of such improvement and extension. The constitutionality of this chapter was vigorously, but unsuccessfully, attacked in *City of Maryville vs. Cushman*, 249 S.W. (2d) 347. See also *City of Sikeston vs. Sisson*, 249 S.W. (2d) 345.

Your first question is whether the City of Columbia can make a reasonable charge for the use of its sewer system by the University. The City is required by Section

Honorable Paul M. Peterson:

250.120 to make and collect charges for the use of the system. Since the University is exempted from taxation by Article X, Section 6, Constitution of Missouri, 1945, and Section 137.100, RSMo 1949, it might be contended that the charges made for the use of the sewerage system are taxes, and the University is thus exempted. However, such charges are declared by the Supreme Court of Missouri to be charges for a service rendered, and not taxes. *City of Maryville vs. Cushman*, 249 S.W. (2d) 347, 353, and cases therein cited. It can make no difference that the City had not heretofore charged for the use of the sewerage system. (*City of Maryville vs. Cushman*, supra.)

Your next question is whether the City can collect from the University the amount of such charges. We assume that you wish to know if the City can, by an action at law, enforce payment by the University if it refuses to pay. The University is made a corporation to be known as "The Curators of the University of Missouri" by Section 172.020, RSMo 1949, and is given the power to sue and be sued in contract actions. *Todd vs. Curators of the University of Missouri*, 347 Mo. 460, 147 S.W. (2d) 1063. Since the rendering of sewerage services would be in the nature of a contract we conclude that the University could be sued for non-payment of charges by it.

Your next question is whether the City may refuse the University the right to use the City's sewers if the charges for the use thereof are not paid. We assume that the refusal to pay will not be based upon a dispute as to the proper amount of the charge, but based upon doubt of the power of the University to pay such charges.

Further powers are given to cities by Section 250.240 which reads as follows:

"It is the purpose of this chapter to enable cities, towns and villages and sewer districts to protect the public health and welfare by preventing or abating the pollution of water and creating means for supplying wholesome water, and to these ends every such municipality and sewer district shall have the power to do all things necessary or convenient to carry out such purpose, in addition to the powers conferred in this chapter. This chapter

Honorable Paul M. Peterson:

is remedial in nature and the powers hereby granted shall be liberally construed."

We conclude that the power to discontinue sewerage services to persons who do not pay the charges therefor is a power both necessary and convenient to the operation of the sewerage system on a sound financial basis. Therefore, the City of Columbia is given such power by Section 250.240.

Since the School of Mines and Metallurgy is a department of the University (Section 172.430, RSMo 1949), and the City of Rolla is a City within the meaning and intent of Section 250.010, what is said in this opinion is applicable to said School of Mines and Metallurgy and the City of Rolla.

CONCLUSION

In the premises, therefore, it is the opinion of this office that the City of Columbia may exact a reasonable charge from The Curators of the University of Missouri for the use of the Columbia sewerage system by the University of Missouri, and that said City may refuse to permit the University to use the City's sewerage system if reasonable charges made therefor are not paid.

The foregoing is applicable to the City of Rolla and the School of Mines and Metallurgy.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Mr. Paul McGhee.

Yours very truly,

PMcG:irk

JOHN M. DALTON
Attorney General