

METROPOLITAN ST. LOUIS
SEWER DISTRICT:
DIVISION OF HEALTH:
REGULATIONS:

The Division of Health is under the responsibility of requiring submission to it and approval by it of plans and specifications for improvements and extensions of sewers on the Metropolitan St. Louis Sewer District.



July 20, 1955

Honorable James R. Amos, M.D.
Director
The Division of Health
Jefferson City, Missouri

Dear Sir:

Your recent request for an official opinion reads:

"Enclosed herewith is a copy of the plan of the Metropolitan St. Louis Sewer District which was adopted by the voters of St. Louis and St. Louis County on February 9, 1954. Under Section 3.020, (19), Page 13, the Metropolitan St. Louis Sewer District is granted the power to approve, revise, or reject the plans and designs of all outfall sewers, trunks, mains, submains, interceptors, lateral sewers, outlets for sewerage, storm water drains, pumping and ventilating stations, and disposal and treatment plants and works proposed to be constructed, altered, or reconstructed by any other person or corporation, private or public, in the District. No such sewer or drainage facilities shall be constructed or reconstructed without the approval of the District. Any such work shall be subject to inspection and supervision of the District. Under Section 12.060, Page 32, the plan provides that all existing ordinances, orders, rules, and regulations pertaining to matters which are by this Plan placed under the jurisdiction of the District herein created, shall remain in full force and effect until superseded by ordinances, orders, rules, or regulations of the District.

"We are also enclosing a copy of a policy statement of the Metropolitan St. Louis Sewer District in regard to the procedure for applicants for approval of subdivision sanitary sewers where trunk sewers are not presently available.

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"A copy of the regulations of the Division of Health governing the installation, extension and operation of public sewerage systems is enclosed for information and reference purposes. As indicated on Page 3, these regulations were developed in accordance with powers granted under Chapter 192, Revised Statutes of Missouri, 1949, and as required by Article IV, Section 16, Constitution of the State of Missouri, the regulations were filed with the Secretary of State of Missouri on July 16, 1948.

"With respect to the above and other provisions of the Metropolitan St. Louis Sewer District plan and policy statement, we respectfully request an opinion as to whether the Division of Health is relieved of the responsibility of requiring the submission of plans and specifications for proposed sanitary sewerage improvements within that District to the Division of Health for examination and approval."

All statutory references made by us herein are to the MoRS 1949, unless otherwise indicated.

The issue here, as stated by you, is whether the Metropolitan St. Louis Sewer District, (hereinafter referred to as "the sewer district"), which includes contiguous areas in both St. Louis City and County, which is preparing to embark upon a very extensive sewer improvement project, is required to submit its plans and specifications to the Division of Health of Missouri for approval.

The regulations of the Division of Health of Missouri (hereinafter referred to simply as "the division") clearly do make this requirement. We direct your attention to the following portion of these regulations:

"REGULATIONS
GOVERNING THE INSTALLATION, EXTENSION, AND OPERATION OF PUBLIC
SEWERAGE SYSTEMS

"Section 1. Definitions - For the purpose of these rules and regulations, the terms used are defined as follows:

"Sewage' - The water-carried waste products or discharges from human beings or animals, or chemicals or other wastes from residences, public or private buildings, swimming pools or industrial establishments, together with such ground, surface, or storm water as may be present.

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"Sewer Systems" - All structures, conduits and pipe lines by which sewage is collected, transported and discharged to the point of disposal, except plumbing within and in connection with buildings and service pipes from buildings to street sewers.

"Sewage Treatment Plants" - All devices and appurtenances which treat or were designed to treat sewage by changing the nature of, or removing any of, its constituents, before final disposal into any of the waters, or upon any of the lands of the state.

"Waters of the State" - All lakes, rivers, streams, ponds, springs, wells, and other bodies of surface or ground water, natural, or artificial, within the state or its jurisdiction.

"Owner" - The state, county, city, town, village, corporation, firm, company, institution, person or persons owning or operating any sewer system or sewage treatment plant.

"Division of Health" - The Division of Health of the State Department of Public Health and Welfare of Missouri.

"APPROVAL OF PLANS REQUIRED FOR PUBLIC SEWERAGE SYSTEMS

"Section 2. Preliminary Report Required - Before detailed plans and specifications for new construction or improvements are prepared, the owner or his authorized agent shall submit to the Division of Health a preliminary report concerning the construction or improvements to be made, together with such preliminary plans and reports as have been made, whereupon the Division of Health will outline the requirements as regards further investigations, analytical data, information required and general design of proposed works, conformity with which will meet approval.

"Section 3. Submission of Plans for New Sewage Works - Every owner or his authorized agent, before installing or entering into contract for installing a sewer system or sewage treatment plant, shall submit, in duplicate, to and receive the written approval of the Division of Health for complete plans and specifications fully describing such sewage works, and thereafter such plans and specifications shall be substantially adhered to unless deviations are submitted to and receive the written approval of the Division of Health.

"Section 4. Submission of Plans for Alteration to Sewage Works - Every owner or his authorized agent, before making or entering into contract for making alterations or changes in, or additions to, any existing sewer system or sewage treatment plant, shall submit to and receive the written approval of the Division

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of Health of complete plans and specifications fully describing such alterations, changes, or additions; and, thereafter, such plans and specifications must be substantially adhered to unless deviations are submitted to and receive the written approval of the Division of Health.

"Section 5. Final Approval - Every owner, before accepting or placing in operation a new sewer system or sewage treatment plant, or additions to, or changes or alterations in, any existing sewer system or sewage treatment plant, shall receive written final approval of the Division of Health stating that the completed work substantially adheres to the approved plans and specifications.

"Section 6. Requirements - For the information of those concerned in the preparation of plans and specifications for the construction of sewer systems and sewage treatment plants, the Division of Health will issue from time to time the general requirements concerning submission of plans, necessary data, design details, etc., which will meet the approval of the Division of Health.

"(In accordance with powers granted under Chapter 192, Revised Statutes of Missouri, 1949, and as required by Article IV, Section 16, Constitution of the State of Missouri, the above regulations were filed with the Secretary of State of Missouri on July 16, 1948.)"

On March 10, 1949, this department rendered an opinion, a copy of which is enclosed, to William Lee Dodd, Prosecuting Attorney of Ripley County. We invite your attention to this opinion, which constitutes an exhaustive study of the matter before us, and particularly to that portion of the opinion beginning with the first paragraph following the quotation on page 12 through the second paragraph on page 15.

It will be noted that the regulation of the Division, set forth on page 14 of the opinion, is substantially the same as the regulation of the Division set forth by us earlier in this opinion. As will be noted, the Dodd opinion concludes, in regard to the regulation of the Division quoted in the Dodd opinion, that "we believe it clearly within the scope of its (the Division's) authority to require municipalities and others to seek approval of their (sewer) alteration plans so that public nuisances will not arise".

As being indicative of the general controlling authority of the Division over sewers and sewer construction, we enclose a copy of an opinion rendered by this department on February 10, 1950, to the Division, in which we held that "the Division of Health may require the code of regulations prepared by the Board of Plumbing and Sewer Construction of St. Louis County to provide regulations that will protect the public health and safety."

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As being further indicative of the same authority, we enclose a copy of an opinion rendered by this department on September 28, 1953, to Rex A. Henson, Prosecuting Attorney of Butler County, which opinion holds that the division may join as relator in an action by the Prosecuting Attorney of Butler County or the Attorney General of the state, to enjoin the extension of a sewer system, the plans and specifications of which have been submitted to and disapproved by the Division. This, we feel, is authority for the position that plans and specifications of the sewer district must be submitted to and approved by the Division.

You have enclosed with your letter a pamphlet entitled "Proposed Plan of the Metropolitan St. Louis Sewer District," and have directed our attention to paragraph 19 of Section 3.020 of the Plan, which, referring to the power of the sewer district reads:

"To approve, revise, or reject the plans and designs of all outfall sewers, trunks, mains, submains, interceptors, lateral sewers, outlets for sewerage, storm water drains, pumping and ventilating stations, and disposal and treatment plants and works proposed to be constructed, altered, or reconstructed by any other person or corporation, private or public, in the District. No such sewer or drainage facilities shall be constructed or reconstructed without the approval of the District. Any such work shall be subject to inspection and supervision of the District."

At first reading it would appear that the above contemplates that all authority for the approval of plans and specifications resides in the sewer district. A more prolonged consideration of it, however, does not indicate that it is intended to be or is exclusive of approval of the plans and specifications by the Division.

You also directed our attention to Section 12.060 of the Plan, which reads:

"All existing ordinances, orders, rules, and regulations pertaining to matters which are by this Plan placed under the jurisdiction of the District herein created, shall remain in full force and effect until superseded by ordinances, orders, rules, or regulations of the District."

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We believe, likewise, that the above is not exclusive of the regulation of the Division referred to above. But even if we are mistaken in the meaning which we ascribe to paragraph 19 of Section 3.020 and Section 12.060 of the Plan, and if the meaning is that the sewer district is to be the final and absolute authority, and that the Division be excluded from any participation, said intention cannot be legally effectuated if it be contrary to law, as we believe it would be.

In this regard we direct attention to paragraph 1.010 of the Plan, which reads:

"In the interest of the public health and for the purpose of providing adequate sewer and drainage facilities within the boundaries herein defined, or as extended in the manner herein provided, there is hereby established a metropolitan sewer district under the provisions of Section 30 of Article VI of the Constitution of Missouri. Said District shall be known by and under the name of 'The Metropolitan St. Louis Sewer District.' Said District, hereinafter referred to as 'the District,' shall be a body corporate, a municipal corporation, and a political subdivision of the state, with power to adopt, use, and alter at its pleasure a corporate seal, sue and be sued, contract and be contracted with, and in other ways to act as a public corporation within the purview of this Plan, and shall have the powers, duties, and functions as herein prescribed."

Also to Section 1.020, which reads:

"Pursuant to the provisions of this Plan and subject to the limitations imposed hereby and by the Constitution of Missouri, all powers of the District shall be vested in a Board of Trustees, hereinafter referred to as 'the Board', which shall enact District ordinances, adopt budgets, determine policies, and appoint the Executive Director, who shall execute the ordinances and administer the government of the District and all subdistricts. The powers of the District shall be exercised in the manner prescribed in this Plan, or, if not prescribed herein, in such manner as may be prescribed by the Board."

By the above the sewer district is made "a municipal corporation" and a "political subdivision of the state". It is, therefore, a "local" unit of government established for a particular

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purpose, and is given the authority to enact ordinances.

We now direct attention to Section 192.290 (RSMo 1949), which reads:

"All rules and regulations authorized and made by the division of health in accordance with this chapter shall supersede as to those matters to which this chapter relates, all local ordinances, rules and regulations and shall be observed throughout the state and enforced by all local and state health authorities. Nothing herein shall limit the right of local authorities to make such further ordinances, rules and regulations not inconsistent with the rules and regulations prescribed by the division of health which may be necessary for the particular locality under the jurisdiction of such local authorities."

If, therefore, paragraph 19 of Section 3.020 and Section 12.060 of the Plan, are in conflict with the regulations of the Division, the above provisions of the Plan must give way to the regulations of the Division, according to Section 192.290, supra, provided, of course, that the Division was authorized to enact the regulations and requiring submission to it for approval of all plans and specifications for sewer improvements and extensions in the state. As we have already pointed out, the Dodd opinion held that the Division was so authorized. We will here elaborate somewhat upon this point. In so doing we direct attention to the first line of Section 192.020, which reads:

"It shall be the general duty and responsibility of the division of health to safeguard the health of the people in the state and all its subdivisions.* * *" (Underscoring ours.)

The above grant of authority would appear to be about as broad, general, and inclusive as it could be made to be.

In Am. Jur., Vol. 11, Sec. 271, we note the following general statement of the law on this matter:

"One of the most important fields of legislation in which a state may enact measures under the police power is that of regulations in the interest of public health and safety. No exhaustive examination of all the matters which may be regulated under this object of the police power is practicable, but under it laws may be passed providing for drainage and sewer systems, for the removal of large bodies of stag-

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nant water which produce breeders of disease, for irrigation and reclamation, for levee, flood control, and conservancy acts, for the protection of a municipal water supply, and for the protection of a watershed. Similar valid regulations are those requiring the owners of a lot which has been declared to be dangerous to the public health to fill it up to a certain level; dealing with the evils of overcrowded tenements and unhealthy slums; requiring the plumbing installed in buildings to meet certain specifications; making it a penal offense to discharge any refuse matter into a running stream; for forbidding anyone to make use of a polluted water supply for drinking purposes; providing for the collection and removal of garbage, refuse, and offal in thickly populated cities; and, in general prohibiting the maintenance of any unsanitary condition which amounts to a nuisance."

CONCLUSION

It is the opinion of this department that the Division of Health is under the responsibility of requiring submission to it and approval by it of plans and specifications for improvements and extensions of sewers of the Metropolitan St. Louis Sewer District.

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

Very truly yours,

JOHN M. DALTON
Attorney General

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