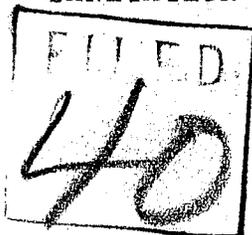


COUNTIES: (1) A county of the third class has no authority
COUNTY COURT: by itself to create a sewer or sanitation district
SEWER DISTRICTS: either as a statutory district or special benefit
SANITATION DISTRICTS: assessment district through its county court.



September 8, 1955

Honorable Andrew J. Higgins
Prosecuting Attorney
Platte County
Platte City, Missouri

Dear Sir:

Your request for an opinion reads as follows:

"The County Court of Platte County has authorized a request for your Opinion for the benefit of the Platte County Planning Commission.

"Platte County is a 3rd class County, lying within the Kansas City metropolitan area, immediately northwest of the Kansas City, Missouri-Kansas City, Kansas city limits. Said County during the past 2 years has undergone substantial changes in the use of its land by subdivision of properties. The number of homes built in the County has steadily increased and the prospect for the future is that this development will continue at an ever-increasing rate. However, subdividers have now been advised that sewage disposal plants of the community type, maintained and operated by home-owners groups and associations will no longer be acceptable in applications for guaranteed home loans; with the suggestion that the operation of future sewage treatment plants be taken over by the political subdivision involved, i.e., the city, town, village, or County, in which the plant is located. The last named political subdivision is the one here involved since the greater subdivision developments are in unincorporated areas of the County. This situation is rapidly bringing large residential developments to a stand-still. Developers and

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the Planning Commission are in sympathy with such rulings since the community type treatment is not a final answer to sewage disposal, however, an alternative answer does not readily present itself.

"Based on engineering advice, a lagoon type of disposal plant located in the lower end of a given water shed connected with up-stream developments by permanent sanitary sewers serving the entire drainage district would seem most feasible. The major difficulty confronting such a plan and proposal is the acquisition of right-of-way for the sewers and lagoon; and the establishment of some sort of taxing and assessing structure by which the system could be perpetually operated and maintained. Subdividers themselves, since they are presently required to build their own community type treatment plant, would no doubt be willing to pay the sum of money necessary for that purpose over to the use of the 'sewer authority' for purpose of setting up the original fund necessary to pay for the right-of-way and construction.

"The following questions arise:

"1. Is there any authority for a County of the 3rd class through its County Court to create a sewer or sanitation district either as a statutory district or special benefit assessment district, either of which would have some sort of tax and assessment structure for its perpetuation?

"2. Whether or not the authority for a district such as contemplated in Number 1 above exists, does the County through its County Court have the necessary authority to condemn for a sewer right-of-way and lagoon?

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"3. If an affirmative answer can be found to Number 1 and 2 above, can the County by its County Court enter into the necessary contracts covering receipt and application, from the original subdividers, of such funds necessary to construct the lagoon and connecting sewers?"

In answering your first question it must be remembered that the county and the county court have only such authority as is given to them by the legislature. *Bradford vs. Phelps Co.*, Mo. Sup., 210 S.W.2d 996; *Clark vs. Adair Co.*, 79 Mo. 536; *McClellan vs. City of St. Louis*, 170 S. W. 2d 131.

There is no provision in the Constitution of Missouri, 1945, authorizing a county of the third class by itself, or in conjunction with any other political subdivision, to create a sewer or sanitation district. The statutory provisions for the creation of sewer and sanitation districts are found in Chapters 248 and 249, RSMo 1949, and Cumulative Supplement, 1953. Chapter 249 has to do with the creation of sewer districts in St. Louis and Jackson counties, and counties having a population of not less than one hundred thousand inhabitants. Chapter 248 authorizes the creation of sanitation districts in those areas of the state which lie in part within and part without the corporate limits of any city having a population of three hundred thousand inhabitants or more, and which lies in part within a county or counties of the state whether such county or counties be of any class whatsoever. Thus, if part of a proposed sanitation district is in a city of three hundred thousand inhabitants or more, then any county of the third class within which part of such proposed sanitation district area lies, is authorized to take steps toward the creation of such district. However, your request contemplates Platte County by itself, through its county court, establishing a sewer or sanitation district not in conjunction with any city having a population of three hundred thousand or more. Thus, under the circumstances presented in your request no part of the area proposed for a sanitation district lies in such a city having three hundred thousand population or more, and thus as stated under the circumstances in your request Platte County being a third class county, is not authorized by itself to create a sanitation district under any of the provisions of Chapters 248, 249 RSMo 1949, Cumulative Supplement, 1953.

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Thus, the answer to your first question must be in the negative since neither the county nor the county court of a third class county has authority by itself to create a sewer or sanitation district.

In view of the fact that the answer to your first question is in the negative it is the belief of this office that any answer to the second and third question is unnecessary.

CONCLUSION

It is the opinion of this office that there is no constitutional or legislative authority for a county of the third class by its county court by itself to create a sewer or sanitation district in any way.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Harold L. Volkmer.

Yours very truly

John M. Dalton
Attorney General

HLV:GMcK:lc