

SEWERS: The dumping of sewage on adjacent property or the
SEPTIC TANKS: maintenance of leaking septic tanks in unincorporated
NUISANCES: areas may constitute a criminal offense and may con-
PROSECUTING stitute a public nuisance which may be abated by
ATTORNEYS: action of the prosecuting attorney.



March 23, 1955

Honorable Ernest J. Hilgert
Assistant Prosecuting Attorney
St. Louis County, Missouri

Dear Sir:

This is in response to your recent request for an opinion of this office wherein you ask:

"I would appreciate you sending me at your earliest opportunity, any Opinions you have relating to the dumping of sewage by individual property owners on to others property or the maintenance of leaking septic tanks in unincorporated areas of counties in Missouri.

"If you have not rendered such an Opinion would you be kind enough to do so."

A search of the statutes of Missouri indicate that, dependent upon the facts in each individual case, the actions to which you refer might be violative of several sections of the Missouri statutes.

Section 559.160, RSMo. 1949, makes it a felony to wilfully poison any spring, well or reservoir of water. It is doubtful, but theoretically possible, that the matters which you mention might constitute violation of this section.

Section 564.010, RSMo. 1949, makes it a misdemeanor for any one to put any dead animal, carcass or part thereof, the offal or any other filth into any well, spring, brook, branch, creek, pond or lake and further makes it a misdemeanor for any person to place in or near any public road or upon any premises not his own or in any of the streams, or water courses any dead animal, carcass or parts thereof or other nuisances to the annoyance of the citizens of this state. It is quite possible that the matters to which you refer in your request might constitute a violation of some of the provisions of this statute.

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Section 564.020, RSMo. 1949 makes it a misdemeanor to wilfully or maliciously defile or in any way corrupt the waters of a well, spring, brook or reservoir used for domestic or municipal purposes. Again it is not likely but possible that the matters to which you refer in your request might constitute a violation of this statute.

Further, it is possible that the facts surrounding the activities mentioned in your request might constitute a public nuisance, that is, they might create a condition which adversely affected the health, welfare or rights enjoyed by the citizens as a whole or as a part of the public. See State ex rel. Wear v. Springfield Gas and Electric Co. (Springfield Court of Appeals) 204 S.W. 942 and Smith vs. City of Sedalia, 152 Mo. 283, 53 S.W.907.

If the sewage were dumped upon a public street or road rather than upon adjoining private property it would seem clear that such practice would constitute a public nuisance. See Sullivan Realty and Improvement Co. vs. Crockett, 158 Mo. App. 573, 138 S.W. 924.

In the events that all of the facts and circumstances surrounding the matters to which you refer would constitute a public nuisance, it is clear that the prosecuting attorney would be empowered to bring an action for the abatement of such public nuisance.

This matter was carefully considered by the Supreme Court en banc in the case of State ex rel. Thrash v. Lamb, 237 Mo. 437, 141 S.W. 665, where the court reached the following conclusion:

"Our conclusion is that the prosecuting attorney was authorized by law to institute a suit in the circuit court of Chariton county to enjoin, in behalf of the State, a public nuisance, and that he could proceed without giving bond. * * *"

In this connection see also State ex rel. Lamb v. City of Sedalia (K. C. Court of Appeals,) 241 S.W. 656, and State ex rel. Detienne vs. City of Vandalia, 119 Mo. App. 406, 94 S.W. 1009.

If the action of the persons in question in dumping sewage on adjacent property, or maintaining leaking septic tanks, should constitute a private nuisance but not a public nuisance then, of course, a prosecuting attorney would not be authorized to act in the premises but the injured party could maintain a private action for the abatement of such nuisance and for his damage. Also if the individual property owner suffered special and unique injury different from that suffered by the general public in connection with a public nuisance such individual could maintain his own suit for redress. See Edmondson v. City of Moberly, 98

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Mo. 523.

In the case of a public nuisance the person who caused such nuisance might also be proceeded against by the prosecuting attorney under the provisions of Section 564.080, RSMo. 1949, which makes it a misdemeanor to maintain a public nuisance under certain circumstances.

CONCLUSION

It is the conclusion of this office that if the facts surrounding the matters to which you refer in your request constitute a violation of any of the mentioned statutes or constitute a public nuisance the prosecuting attorney may proceed either to prosecute for violation of such statute or to secure the abatement of the public nuisance.

The foregoing opinion which I hereby approve, was prepared by my assistant, Mr. Fred L. Howard.

Yours very truly,

John M. Dalton
Attorney General