

SPECIAL CHARTERED CITIES:  
SEWERAGE PROJECTS:  
AUTHORITY OF DIVISION OF  
HEALTH:

The Division of Health of Missouri is without authority to require the submission of plans and specifications of sewers and sewage treatment facilities by the city of Kansas City, Missouri, since, under Section 19, Article VI, 1945 Constitution of Missouri, charter provisions of a special chartered city concerning purely municipal functions supersede the general laws relating thereto.



June 14, 1956.

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

Dear Dr. Amos:

This will acknowledge receipt of your opinion request of December 20, 1955, which reads as follows:

"Enclosed herewith is correspondence between the Division of Health and officials of Kansas City, Missouri regarding submission of plans and specifications of sewers and sewage treatment facilities. In accordance with Section 192.200 we have requested the City to submit plans and specifications for sewerage works.

"I should appreciate your opinion as to whether or not the Division of Health is responsible for review and written approval of plans and specifications for sewerage works in Kansas City, Missouri."

Although the opinion request is directed toward the provisions of Section 192.200, RSMo 1949, in view of the correspondence between interested parties in connection with the subject matter of the opinion, some incidental questions relating to rules and regulations of the Division of Health, (hereinafter referred to as the "Division") will be briefly discussed.

We think that the rules and regulations promulgated by the Division are valid. Yet, there are certain limitations on their operative effect which shall be pointed out later in the opinion. A well written opinion addressed to the Honorable Wm. Lee Dodd, March 10, 1949, (enclosed herewith) represents

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an exhaustive study on the question of the validity of said rules and regulations, and the holding thereof that said rules and regulations are valid is hereby adopted.

In view of Section 192.310, RSMo 1949, a question is presented as to whether or not the city of Kansas City, Missouri, is subject to the rules and regulations promulgated by the Division. Said section reads as follows:

"Nothing in sections 192.260 to 192.320 shall apply to cities which now have, or may hereafter have, a population of seventy-five thousand or over which are maintaining organized health departments; provided, that such cities shall furnish the division of health reports of contagious, infectious, communicable or dangerous diseases, which have been designated by them as such, and such other statistical information as the board may require."

The particular section of those excluded in Section 192.310, supra, which is of interest, is Section 192.290, RSMo 1949. Said sections reads as follows:

"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."

Suffice it to say that the authority of the Division, in requiring plans and specifications of sewer and sewage treatment facilities to be submitted, is not dependent upon Section 192.290, supra. Rather, without regard to the size of the city, the Division is given authority to require the submission of such plans and specifications under Section 192.200, RSMo 1949, which

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reads as follows:

"Every municipal corporation, private corporation, company or individual supplying or authorized to supply water to the public within the state shall file with the division of health a certified copy of the plans and surveys of the water works with a description of the methods of purification and of the source from which the supply of water is derived, and no source of supply shall be used without a written permit of approval from the division of health, and no new supplies shall be established or dispensed to the public without first obtaining such written permit of approval. Whenever an investigation of any water supply, plant, or methods used shall be undertaken by the division of health, it shall be the duty of the municipality, corporation, company, institution or person having in charge the water supply under investigation to furnish on demand to the division of health such information as that body considers necessary to determine the sanitary quality of the water being dispensed. Approval of new water supplies for municipalities must necessarily involve consideration of sewage provisions for safety to the public health."

The last and real question to be decided is whether or not the Division has the authority under Section 192.200, supra, to require the city of Kansas City, Missouri, to submit the plans and specifications of sewers and sewage treatment facilities to the Division for the latter's approval or disapproval.

It appears that such authority does not exist in view of the fact that the City of Kansas City is a special chartered city under the Constitution of Missouri. As will be seen this conclusion would obtain irrespective of whether the supposed authority was predicated upon the provisions of Section 192.200, supra, or upon the rules and regulations promulgated by the Division entitled "Regulations Governing The Installation, Extension, and Operation of Sewerage Works."

Section 19, Article 6, 1945 Constitution of Missouri, reads in part as follows:

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"Any city having more than 10,000 inhabitants may frame and adopt a charter for its own government, consistent with and subject to the constitution and laws of the state, \* \* \*"

In a number of cases, this section has been construed that where the provisions of the special charter of a city chartered under this section and the general statutes are in conflict as to a municipal function, the special charter controls or supersedes the general law. City of Kansas City vs. Marsh Oil Company, 41 S.W. 943, 140 Mo. 458; U.S. v. Certain Lands in Jackson County, Missouri, D. C. 69 F. Supp., 56; Kansas City, Missouri, vs. J. I. Thrashing Machine Company et al., 87 S.W. 2d 195.

In the Thrashing Machine Case, supra, the Supreme Court of Missouri stated, l.c. 202:

"It, therefore, seems that the principle upon which the decisions may be harmonized is that as to its form of organization and as to its private, local corporate functions, and the manner of exercising them, the constitutional provision grants to the people of the cities designated part of the legislative power of the state for the purpose of determining such matters and incorporating them in their charter as they see fit, free from the control of the General Assembly. When matters of this nature are adopted in a charter, as prescribed by a Constitution, such charter provisions have the force and effect of a statute of the Legislature and can only be declared invalid for the same reason, namely, if they violate constitutional limitations or prohibitions. \* \* \*"

Sewer projects are held to be matters of municipal concern, and therefore, with respect to a special chartered city, the regulations of such city supersede the general laws relating thereto.

In the case of In re East Bottoms Drainage & Levee District Meriwether et al. v. Kansas City, 259 S.W. 89, the Supreme Court of Missouri said, l.c. 91:

"The creation of sewers and drains within cities and levees also, which accomplish the same purpose, is one of the elementary

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functions of a local or municipal government.

"The construction \* \* \* of a system of sewers for the municipality is clearly a municipal function.' 3 Dillong, Mun. Corp. (5th Ed.) § 1148.

"Logically all these are strictly municipal functions which especially and peculiarly promote the comfort, safety and happiness of citizens of the municipality rather than the welfare of the general public.' 28 Cyc. 269.

"(3) So essential are sewers to the hygiene and sanitation of municipalities that the rule of strict construction is relaxed in construing their powers to construct sewers. 9 R.G.L. p. 621; McMurry v. Kansas City, 283 Mo. Loc. Cit. 493, 223 S.W. 615.

"(4) Indeed, it may be said to be a matter of common knowledge that all cities of any considerable population in this state have from the earliest time, either by special charter or general law, been authorized to construct sewers and levees belonging to the same class of necessary local municipal improvements. Sewers are of a more local character and concern than streets in a city. Donohoe v. Kansas City, 136 Mo. loc. cit. 667, 38 S.W. 571. And it is well settled that streets are of such local concern that the freeholders' charter of Kansas City may contain its own special provisions for opening and grading streets, although they conflict with the general law relating to cities on that subject. Kansas City v. Field, 99 Mo. 352, 12 S.W. 802; Kansas City v. Marsh Oil Co., 140 Mo. 458, 41 S.W. 943. We have also made the same ruling, as to primacy of the charter over the general state law relating to the establishment and maintenance of parks in said city. Kansas City ex rel. v. Scarritt, 127 Mo. 642, 29 S.W. 845, 30 S.W. 111. We must therefore rule that the charter provisions of said city relating to the establishment of levees and drains within said city are a matter of essential local municipal concern, properly contained in the freeholders'

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charter of Kansas City, and prevail over the general law on that subject, if there is any difference or conflict between them."

In view of the language of the Supreme Court of Missouri in the above case, we find that a sewer project is a matter of municipal function, and consequently, where there is a conflict between local laws of a special chartered city concerning municipal functions and the general law relating thereto, the former supersedes the latter.

CONCLUSION

It is therefore the opinion of this office that the Division of Health of Missouri is without authority to require the submission of plans and specifications of sewers and sewage treatment facilities by the city of Kansas City, Missouri, since, under Section 19, Article VI, 1945 Constitution of Missouri, charter provisions of a special chartered city concerning purely municipal functions supersede the general laws relating thereto.

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

Very truly yours,

JOHN M. DALTON  
Attorney General

HLH:bi:gm

Enc.