

WATER POLLUTION BOARD:
FEDERAL JURISDICTION:
STATE HOSPITALS:

1. Since the purpose expressed by the enactment of Chapter 204 of the Revised Statutes of Missouri, Cum. Supp. 1957, is effected by Section 466h of Title 33, United States Code Annotated, there has

not arisen a situation which would necessitate the requirement by the State of Missouri that facilities of a specific type be constructed or maintained by Federal agencies and installations in the State of Missouri, nor that they be required to obtain a permit to discharge waste into the waters in Missouri. 2. Missouri state installations such as the state hospitals at Farmington and Nevada are subject to Chapter 204, RSMo, Cum. Supp. 1957, and are required to obtain construction permits for sewage disposals and to discharge wastes into the waters of the state.

Dr. H. M. Hardwicke
Acting Director
Division of Health
State Office Building
Jefferson City, Missouri



Dear Dr. Hardwicke:

This is in response to your letter of September 3, 1958, and our telephone conversation with Mr. Jack Smith of your department on the 29th of October, in which you request an opinion from this office. We quote:

"It is respectfully requested that you advise us as to whether or not federal installations such as Whiteman Air Force Base and Fort Leonard Wood are required to obtain a construction permit for proposed sewage treatment works, and whether or not they are required to obtain a permit to discharge waste into the waters of the state. As we understand Chapter 204, Revised Statutes of Missouri, 1949, Cumulative Supplement, 1957, there are no exceptions in regard to obtaining permits for construction of sewage treatment works or for discharge of waste into the waters of the state.

"We also request an opinion as to whether or not state installations such as the State Hospitals at Farmington and Nevada are required to obtain construction permits for sewage treatment works and permits to discharge waste into the waters of the state.

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"We would appreciate receiving your opinion at an early date since the Water Pollution Board is now carrying out the provisions of Chapter 204, Revised Statutes of Missouri, 1949, Cumulative Supplement, 1957."

For the purpose of indicating the policy of Chapter 204 of the Revised Statutes of Missouri, Cumulative Supplement 1957, we quote Section 204.020:

"Inasmuch as the people of the state of Missouri are dependent upon the rivers, streams, lakes and subsurface waters of the state for public and private water supply and for agricultural, industrial and recreational uses, it is declared to be the policy of the state of Missouri to act in the public interest to restore and maintain a reasonable degree of purity in the waters of the state, and to require, where necessary, reasonable treatment of sewage, industrial wastes and other wastes prior to their discharge into the waters of the state."

We also quote Section 204.030, Paragraph 1:

"It is unlawful for any person to cause pollution as defined in section 204.010. Any such action is hereby declared to be a public nuisance."

With respect to your first question, we wish to direct your attention to Section 466h of Title 33, United States Code Annotated, entitled, "Cooperation to control pollution from Federal installations" which states:

"It is declared to be the intent of the Congress that any Federal department or agency having jurisdiction over any building, installation, or other property shall, insofar as practicable and consistent with the interests of the United States and within any available appropriations, cooperate with the Department of Health, Education, and Welfare, and with any State or interstate agency or municipality having jurisdiction over waters into which any matter

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is discharged from such property, in preventing or controlling the pollution of such waters."

It is our understanding that the Federal agencies and installations within the State of Missouri have been directed to cooperate, and have been so doing, with the State of Missouri in preventing and controlling pollution, by virtue of Section 466h. It is our understanding that the Federal installations are to accept Missouri's standards with respect to the permissible effluent discharged into the waters in Missouri. Bearing in mind that this is the result desired by the enactment of Chapter 204 RSMo, Cumulative Supplement 1957, it is our belief that a situation has not arisen which would necessitate the requirement by the State of Missouri that facilities of a specific type be constructed or maintained by the Federal installations. As this office pointed out in an opinion submitted to you on October 17, 1958, it is only when pollution, as defined by Chapter 204, exists, or will exist, that the State of Missouri may require the submission of plans and the permit. Therefore, inasmuch as the cooperative directive is in effect, we believe that there is no conflict between the Federal authority and the state authority.

With respect to your second question, it is our opinion that Chapter 204, RSMo, Cum. Supp. 1957, is applicable to Missouri installations such as the state hospitals at Farmington and Nevada, and that they are required to obtain construction permits for sewage disposals and to discharge wastes into the waters of the state. We wish to state the general policy as it is set forth in 82 C.J.S., page 557:

"Particular words and phrases. In general, the word 'person' used in a statute will not be construed so as to include the sovereign, whether the United States, or a state, or an agency thereof, or a city or town. However, it may include the sovereign where the legislative intent to do so is manifest; and whether the word 'person' as used in a statute includes a state or the United States depends on its legislative environment, that is, the context or the connection in which the word is found; and aids in determining such question include

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the purpose, the subject matter, the context, the legislative history, and the executive interpretation of the statute. The same rule applies to the word 'corporation' so that whether a state or the United States is included therein depends on its legislative environment. Generally the word 'corporations' as used in statutes is construed to refer to private corporations and not to include municipal corporations, unless the statute clearly indicates an intention to the contrary. Various other words or phrases have been construed as not ordinarily including the government, such as the term 'landlord' or 'employer'."

We also wish to quote Section 204.010, paragraph 4, which defines "person" as used within this chapter:

"(4) 'Person', may extend and be applied to bodies politic and corporate, and to partnerships and other unincorporated associations."

You will note that the word "person" may extend and be applied to "bodies politic and corporate". We wish to set forth the definition of the term "body politic" as given in Webster's New International Dictionary, Second Edition, Unabridged:

"Body politic. A group organized for government; now usually specif.: A state."

In *United States v. Maurice*, 26 Fed. Cas. 1211, Chief Justice Marshall says at page 1216:

"The United States is a government, and consequently a body politic and corporate, capable of attaining the objects for which it was created by the means which are necessary for their attainment. This great corporation was ordained and established by the American people, and endowed by them with great powers, for important purposes."

You will observe from this definition, and the quotation

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of Chief Justice Marshall, that a body politic may be construed to be a state, a governing system which may attain the objects for which it was created. We think that this definition includes the agencies or institutions of the state, and that they would be considered a part of that body politic. Agencies and institutions of the state would be the "means which are necessary for their attainment."

We would also be remiss in not taking into consideration the policy of the State of Missouri as expressed in Chapter 204, the water pollution act. It is obvious that it would be beneficial to the people of the State of Missouri to have the state's rivers and streams and waters in a pure and unpolluted condition. We need not elaborate to suggest that it is in the interest of prevention of disease and unsanitary conditions to maintain this water pollution policy. We believe that the General Assembly would intend that its own state agencies would be subject to this water pollution act when those agencies themselves are as capable of polluting the waters of the state as would be many a city industry. The subject matter of this enactment is of state-wide concern, and the enactment is not a usurpation of state jurisdiction, but merely an extension of that state's jurisdiction to its own institutions and agencies. Since the purpose of Chapter 204 is for the public good we cannot but believe that it was the intention of the Legislature that all persons in the State of Missouri, including bodies politic and corporate, and to partnerships and other unincorporated associations, be subject to this water pollution act.

CONCLUSION

It is the opinion of this office that:

1. Since the purpose expressed by the enactment of Chapter 204 of the Revised Statutes of Missouri, Cum. Supp. 1957, is effected by Section 466h of Title 33, United States Code Annotated, there has not arisen a situation which would necessitate the requirement by the State of Missouri that facilities of a specific type be constructed or maintained by Federal agencies and installations in the State of Missouri, nor that they be required to obtain a permit to discharge waste into the waters in Missouri.

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2. Missouri state installations, such as the state hospitals at Farmington and Nevada, are subject to Chapter 204, RSMo, Cum. Supp. 1957, and are required to obtain permits for the construction of sewage disposal systems and to discharge wastes into the waters of the state.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, James B. Slusher.

Yours very truly,

JOHN M. DALTON
Attorney General

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