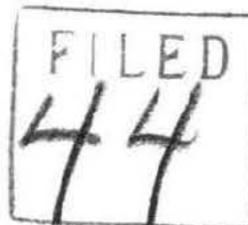


STATE DIVISION OF RESOURCES
AND DEVELOPMENT:
RESOURCES AND DEVELOPMENT:

The division of resources and development has authority to provide planning assistance to any county, municipality, or metropolitan area and exercise all the power and authority granted under the provisions of Sections 255.130, 255.140, and 255.150, RSMo 1959.

September 20, 1961



Honorable James D. Idol, Director
Missouri Resources and Development
Commission
Jefferson Building, Eighth Floor
Jefferson City, Missouri

Dear Mr. Idol:

This will acknowledge receipt of your opinion request of August 31, 1961, which reads as follows:

"In order to comply with the federal requirements for an application for Urban Planning in the Metropolitan St. Louis Area, your opinion is hereby requested as to the authority of this division to perform such work, as provided by Sections 255.130, 255.140, and 255.150, Revised Statutes."

The above mentioned sections were enacted by the Legislature in 1959, Laws of Missouri, 1959, Senate Bill 52, paragraph 1. It is the fundamental principle of statutory construction that an act of the legislature, since it represents the will of the people, carries a presumption of constitutionality and should be recognized and enforced unless it is plainly and palpably a violation of the fundamental law of the constitution. *Bowman v. Kansas City*, 233 S.W. 2d 26.

A discussion with you revealed that an application has been made for an over-all storm water study for the Metropolitan St. Louis Area in conjunction with the Metropolitan St. Louis Sewer District. It is our opinion that the Division of Resources and Development is the official state planning agency for the State of Missouri.

1. Section 255.150 of the Revised Statutes of Missouri, 1959, provides as follows:

"The state division of resources and development is hereby designated as the official state planning agency for the

Honorable James D. Idol

purpose of providing planning assistance to counties, municipalities and metropolitan planning areas, and for such purposes is hereby authorized and empowered to:

"(1) Contract with public agencies or private persons or organizations for any of the purposes of sections 255.130 to 255.150;

"(2) Delegate any of its functions to any other state agency authorized to perform such functions, except that responsibility for such functions shall remain solely with the division;"

2. It is the opinion of this office that the Division of Resources and Development is authorized under the existing state law to perform planning work in the area referred to in the application for the 701 Planning Grant to make an over-all storm water study for the Metropolitan St. Louis Area in conjunction with the Metropolitan St. Louis Sewer District. The authority for this is contained in Section 255.130 of the Revised Statutes of Missouri, 1959, as follows:

"The state division of resources and development is hereby authorized, upon the request of the governing body of any county, municipality or metropolitan area in this state to:

"(1) Provide planning assistance (including planning surveys, land use studies, urban renewal plans, technical services, and other planning work, but excluding plans for specific public works) to and for any county or municipality, or metropolitan area.

"(2) Contract for, receive, and utilize any grants or other financial assistance made available by the federal government or from any other source public or private, for the purpose of sections 255.130 to 255.150."

3. It is the opinion of this office that the proposed storm water survey for the Metropolitan St. Louis Area is within the purview of Section 701 of the Federal Housing Act, 1954, as amended. The reason for this opinion is that it has been

Honorable James D. Idol

explained to this office that this storm water study is an essential part of an over-all plan for the Metropolitan St. Louis Area.

It is further my understanding that this survey does not contain any plans for specific public works which are prohibited by Section 701 of the Federal Housing Act, 1954, as amended.

4. Sections 255.130 and 255.140 of the Revised Statutes of Missouri, 1959, authorize the Division of Resources and Development to contract with the Federal Government, and also the Metropolitan St. Louis Sewer District, to provide the planning storm water survey for the Metropolitan St. Louis Area. Section 255.130 of the Revised Statutes of Missouri, 1959, provides as follows:

"(2) Contract for, receive, and utilize any grants or other financial assistance made available by the federal government or from any other source public or private, for the purpose of sections 255.130 to 255.150."

5. Section 255.150 of the Revised Statutes of Missouri, 1959, provides as follows:

"All matching nonfederal funds required for any planning assistance undertaken by the state division of resources and development pursuant to sections 255.130 to 255.150 shall be provided by the county, municipality or metropolitan area requesting such planning assistance."

This Section requires that all matching nonfederal funds required for this project be provided by the municipality or metropolitan area requesting such planning assistance, in this case the Metropolitan St. Louis Sewer District.

The Division of Resources and Development of the State of Missouri is presently negotiating a contract with the Metropolitan St. Louis Sewer District to provide the necessary matching nonfederal funds required for Project No. Mo. P-2 and the Board of Trustees of the Metropolitan St. Louis Sewer District has adopted the attached Resolution No. 448.

This Resolution provides that the Metropolitan St. Louis Sewer District has the necessary nonfederal matching funds available for the purpose of paying all necessary nonfederal costs to carry out the storm water survey as contained in the application of the Missouri Resources and Development.

Honorable James D. Idol

In conjunction with this opinion, I think it relevant to note that the last General Assembly of the State of Missouri has amended Chapter 255, which applied to the Division of Resources and Development, to provide that effective October 13, 1961, the duties and functions of the Division of Resources and Development are to be transferred to the new Division of Commerce and Industrial Development. The new act provides in part:

"2. All duties and functions otherwise provided by law to be performed by the division of resources and development shall hereafter be performed by the division of commerce and industrial development. The division of commerce and industrial development shall succeed to all other property, documents, records, assets and obligations of the division of resources and development.

"3. Insofar as practicable and desirable, all pending matters before the division of resources and development begun but not completed by that agency shall be completed by the division of commerce and industrial development."

CONCLUSION

It is, therefore, the opinion of this office:

1. The Division of Resources and Development of the State of Missouri is the official State Planning Agency for the purpose of providing planning assistance to counties, municipalities and metropolitan planning areas.

2. That the Division of Resources and Development is authorized under state law to perform work in the Metropolitan St. Louis Area, and in particular that work contained in the Division of Resources and Development application for a 701 Planning Grant to make a storm water survey within the Metropolitan St. Louis Area.

3. The planning work as mentioned in the application for a 701 Planning Grant, as aforementioned, is within the purview of the Federal law, namely, "surveys, land use studies, urban renewal plans, technical services and other planning work exclusive of plans for specific public works."

4. The Division of Resources and Development is empowered, in Chapter 255 of the Revised Statutes of Missouri, 1959, to

Honorable James D. Idol

fulfill the obligations imposed under the grant contract with the Federal government prescribing the terms and conditions thereof.

5. Section 255.150 provides, "All matching nonfederal funds required for any planning assistance undertaken by the state division of resources and development pursuant to sections 255.130 to 255.150 shall be provided by the county, municipality or metropolitan area requesting such planning assistance."

As previously mentioned in this opinion, all of the required nonfederal funds are available and will be provided by the Metropolitan St. Louis Sewer District according to Resolution No. 448, a copy of which is attached to this opinion.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Moody Mansur.

Very truly yours,

THOMAS F. EAGLETON
Attorney General

MM:BJ