

June 30, 1965



Honorable Patrick J. Hickey
Representative 3rd District, St. Louis County
House Post Office
Capitol Building
Jefferson City, Missouri

Dear Representative Hickey:

We are in receipt of your request for an opinion of this department dated January 25, 1965. Your request is as follows:

- "1) May a Constitutional Charter City contract with the Metropolitan St. Louis Sewer District to pay a portion of the costs of constructing sanitary sewers within the City Limits?
- "2) May a Constitutional Charter City which lies within St. Louis County and within the territorial boundaries of the Metropolitan St. Louis Sewer District submit a Bond Issue to its voters in order to pay its share of the costs of construction of sanitary sewers which it agreed to do pursuant to an agreement with the M.S.D.?
- "3) May a Constitutional Charter City which received a refund from the Metropolitan Sewer District for transfer of a treatment plant owned by the City, apply said refund towards the cost of improvements in a sub-sewer district which doesn't encompass the entire city?"

We are informed that the City about which you inquire is Berkeley, Missouri, a Constitutional Charter City located within the boundaries of the Metropolitan St. Louis Sewer District (hereinafter referred to as M.S.D.).

Your first two questions inquire as to the power of Berkeley to contract with M.S.D., for the payment of a part of the cost of constructing sewers within the Berkeley City Limits from the general revenue of the City or from the proceeds of a City Bond Issue.

M.S.D. was created by a vote February 9, 1954, under the provisions of Section 30A (4) of Article VI of the Constitution of Missouri and includes all of St. Louis City and a portion of St. Louis County, including all of the City of Berkeley.

The plan upon its effective date of July 1, 1954, became the organic law of the territory within the boundaries of M.S.D., insofar as sanitary and storm water systems and facilities are concerned.

Section 3.010 of the M.S.D. Plan provides as follows:

"Effective on July 1, 1954, and by virtue of the adoption of this Plan by vote of the people of the City of St. Louis and St. Louis County, the existing sanitary and storm water sewer systems and facilities of any and all municipalities, sewer districts, and other public agencies situated within the boundaries of the District, together with all contracts, rights, privileges, interests, easements, books, maps, plans, papers, and records, of whatever description pertaining to or relating to the design, construction, maintenance, operation, or affairs of such existing sanitary and storm water sewer systems and facilities, and title to the same, shall be transferred and dedicated to the use of and be in the possession and under the jurisdiction, control, and supervision of the District under this Plan created and the District is empowered to take title thereto for its use and possession. The District hereunder created shall thereafter have complete title jurisdiction, control, possession, and supervision of such existing sanitary and storm water sewer systems and of all facilities of such municipalities, sewer districts, and other public agencies for the collection and disposal of sanitary sewage and storm water. Provided, however, that the District shall not assume or agree to pay or be liable for any bonded indebtedness of any such municipality, sewer district, or other public agency. Provided, further, that any transfer of title to automobiles, trucks, or other movable equipment used for purposes

of construction, maintenance, or operation of such existing sanitary and storm water sewer systems and facilities, title to land or buildings used exclusively for administering the affairs of such systems and facilities, or title to the furnishings and equipment in such buildings, shall be made by an agreement or agreements between the District and any such municipality, sewer district, or other public agency. Provided, further, that in order to assure continuity of operation and maintenance any such municipality, sewer district, or other public agency shall continue to maintain and operate its existing sanitary and storm water sewer systems and facilities until the Board shall by resolution set a date on which the District shall undertake the maintenance and operation of said systems and facilities, and on and after such date the District shall exclusively operate, maintain, and control said systems and facilities."

Under provisions of such section, title, possession and control of all sewer systems and facilities of all public agencies within the boundaries of M.S.D. was transferred to M.S.D. on July 1, 1954. By such plan, M.S.D. is given broad power to maintain such sewer systems and facilities and to control such sewers and additions, extensions and improvements to the sewer systems and facilities of the District as the Board of Trustees of M.S.D. decides, in its judgment, will provide effective and advantageous sanitary and storm water drainage and adequate sanitary disposal and treatment of sewage.

However, there is nothing in such plan which prohibits a city which has statutory or charter authority from constructing and maintaining sewers in such city after the creation of M.S.D.

Section 3.020 (7) of the M.S.D. plan specifically authorizes M.S.D. to contract with municipalities and other entities for construction, use or maintenance of sewers and sewer facilities. Such Section provides as follows:

"Powers of the District--The District established under the provisions of this Plan shall have power:

"(7) To contract with municipalities, districts, other public agencies, individuals, or private corporations, or any of them whether within or without the District, for the construction, use,

or maintenance of common or joint sewers, drains, outlets, and disposal plants, or for the performance of any service required by the District."

The plans and designs of such sewers and facilities, constructed in whole or part by a municipality, must be approved by M.S.D., and the sewer or drainage facilities cannot be constructed without the approval of M.S.D. This is provided for in Section 3.020 (19) which provides as follows:

"Section 3.020. Powers of the District.-- The District established under the provisions of this Plan shall have power:

"(19) To approve, revise, or reject the plans and designs of all outfall sewers, trunks, mains, submains, interceptors, lateral sewers, outlets for sewerage, storm water drains, pumping and ventilating stations, and disposal and treatment plants and works proposed to be constructed, altered, or reconstructed by any other person or corporation, private or public, in the District. No such sewer or drainage facilities shall be constructed or reconstructed without the approval of the District. Any such work shall be subject to inspection and supervision of the District."

Section 70.210 Cum. Supp. 63 provides as follows:

"As used in sections 70.210 to 70.230, the following terms mean:

- "(1) 'Governing body', the board, body or persons in which the powers of a municipality or political subdivision are vested;
- "(2) 'Political subdivision', counties, townships, cities, towns, villages, school, county library, city library, city-county library, road, drainage, sewer, levee and fire districts, and any board of control of an art museum."

Section 70.220 RSMo. provides as follows:

"Any municipality or political subdivision of this state, as herein defined, may contract and cooperate with any other municipality or political subdivision, or with an elective or

appointive official thereof, or with a duly authorized agency of the United States, or of this state, or with other states or their municipalities or political subdivisions, or with any private person, firm, association or corporation, for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. If such contract or cooperative action shall be entered into between a municipality or political subdivision and an elective or appointive official of another municipality or political subdivision, said contract or cooperative action must be approved by the governing body of the unit of government in which such elective or appointive official resides."

Under provisions of such sections, cities and sewer districts may contract and cooperate for the construction and operation of a public improvement or facility or for a common service provided the subject and purpose of the contract or cooperative action are within the scope of the powers of the municipality and the political subdivision.

Section 9 (21) of Article II of the Charter of Berkeley provides as follows:

"Section 9. Powers--Without limitation of the powers conferred upon the City in ARTICLE I, Section 2, or by any other provision hereof, the Council shall have power by ordinance:

"(21) To contract and cooperate with other municipalities, counties, states, special districts, the United States, or other governmental bodies, singly or jointly, or in districts or associations, for promoting or carrying out any of the powers and functions of the City, or for the acquisition, construction, or operation of any property, equipment, works, plants, or structures convenient or necessary for carrying out any of the purposes or objects authorized by this Charter."

Under this section of the Charter, the city can contract with a sewer district for carrying out of the powers of such city.

We believe that the City of Berkeley has ample authority to construct in whole or part sanitary and storm sewer systems and facilities and can, therefore, enter into a contract for such construction with M.S.D. under Section 70.220 supra and Section 9 (21) of Article II of the Berkeley charter.

The Charter of Berkeley provides in part as follows in Section 9 of Article II:

"Section 9. Powers--Without limitation of the powers conferred upon the City in ARTICLE I, Section 2, or by any other provision hereof, the Council shall have power by ordinance:

"(3) To make public improvements and acquire by condemnation or otherwise, property within or without the corporate limits necessary for such improvements.

* * * * *

"(5) To expend the money of the City for all lawful purposes.

"(6) To incur indebtedness for any purpose necessary to the exercise of any power granted by this Charter or by the Constitution and laws of the State of Missouri, by borrowing money or otherwise and to give any appropriate security including negotiable bonds of the City in evidence thereof.

"(7) To exercise the power of eminent domain, including the power of excess condemnation as authorized by the Constitution or by law, and to condemn property, real or personal, or any easement or use therein for public use within or without the City.

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"(11) To improve water courses and regulate the use thereof.

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"(13) To provide for the collection and disposal of sewage, offal, ashes, garbage and refuse, or to provide for licensing and regulating such collection and disposal.

* * * * *

"(18) To do all things whatsoever necessary or expedient for promoting and maintaining the comfort, education, morals, safety, peace, government, health, welfare, trade, commerce, or industry of the City and its inhabitants."

Section 250.010 Revised Statutes of Mo., applicable to Constitutional Charter Cities provides that such cities can acquire and construct and maintain a sewer system.

Section 250.040 Revised Statutes of Mo., relating to payment for such sewer systems provides as follows:

"The cost to any such city, town or village of acquiring, constructing, improving or extending a sewerage system or a combined waterworks and sewerage system may be met:

- " (1) Through the expenditure by any such city, town or village of any funds available for that purpose;
- " (2) Through the issuance of bonds for that purpose of the city, town or village payable from taxes to be levied by such city, town or village;
- " (3) From the proceeds of special assessments levied and collected in accordance with law;
- " (4) From any other funds which may be obtained under any law of the state or of the United States for that purpose; or
- " (5) From the proceeds of revenue bonds of such city, town or village, payable solely from the revenues to be derived from the operation of such sewerage system or combined waterworks and sewerage system or from any combination of any or all such methods of providing funds."

Under the authority of the Charter of Berkeley and Section 250.010, it is clear that the City of Berkeley has ample authority to construct sewer facilities. The creation of M.S.D. did not in any way preclude the payment in whole or in part of the cost of sewer facilities for cities in M.S.D., but made the construction of such sewer facilities subject to the approval of M.S.D.

Under the provisions of Section 3.020 (7) of the M.S.D. Plan, Section 9 (21) of ARTICLE II of the Berkeley Charter and Section 70.220, RSMo. providing for cooperative agreements, M.S.D. and Berkeley can contract and cooperate for the construction and maintenance of sewer systems and facilities located within the City of Berkeley. Berkeley can, therefore, contract with M.S.D. to pay a portion of the cost of construction of sewers within the Berkeley city limits.

Under the provisions of Section 9 (6) of Article II, of the Berkeley Charter and Section 250.040, Revised Statutes of Mo., the City can issue bonds for construction of sewage facilities.

In the case of Petition of the City of St. Louis, 363 S.W. 2d, 612, the Supreme Court of Missouri upheld the right of the City of St. Louis to issue bonds for construction of sewers in such City. In that case, the sewer bond issue was authorized by a vote August 1, 1944. Part of the bonds were issued by the City prior to July 1, 1954, the effective date of the M.S.D. Plan.

On November 22, 1961, an ordinance was passed by the City of St. Louis authorizing the issuance of the remainder of such bonds. It was alleged by those opposing the issuance of such bonds, that the adoption of the M.S.D. Plan terminated any authority of such City to issue bonds for construction of sewers. The Court in speaking of the M.S.D. Plan and this contention said l.c. 615 and 616:

"[1] While it is true that, under Sec. 3.010 of Article 3 of said Plan, all existing sanitary and storm-water sewer systems and facilities of any and all municipalities, sewer districts and other public agencies within the boundaries of said District were transferred to and dedicated to the use of and under the jurisdiction, control and supervision of the Metropolitan St. Louis Sewer District, nevertheless, Sec. 3.020, subdivision 7, of Article 3, of the Plan, fixing the powers of the District, expressly provides that the new District shall have power 'To contract with municipalities, districts, other public agencies, individuals, or private corporations, or any of them whether within or without the District, for the construction, use or maintenance of common or joint sewers, drains, outlets, and disposal plants, or for the performance of any service

required by the District.' It is under this provision that the contract of March 1, 1962, was entered into between the District and the City of St. Louis, in pursuance of Ordinance No. 50678 of the City of St. Louis, as enacted on November 22, 1961, providing for the issuance of the remaining bonds authorized by the election of August 1, 1944. And see Section 3, subdivision 19, of the Plan to the effect that no sewer or drainage facilities may be constructed or reconstructed in the District without the approval, supervision and inspection of the District. The Plan provides for its own method of construction and improvement of all sanitary and storm-water sewers in said District, and expressly provides that, if any existing municipality, sewer district or other public agency situated within the District shall on July 1, 1954, have outstanding and unpaid any sewer bonds or liabilities, the creation of the District under this Plan shall not be affected; and that the transfer and dedication of the sewer systems and facilities of any municipality, sewer districts or other public agency, to the uses and purposes of the District, shall not affect or alter in any way the said bonds or liabilities, nor shall it affect or alter the rights or obligations thereunder (Sec. 12.090, Article 12 of the Plan). It is also true that the City of St. Louis cannot exercise the same power, jurisdiction and control over sewers that it previously exercised and that it cannot exercise such powers concurrently with the Metropolitan St. Louis Sewer District in the same territory (see *Wellston Fire Protective Dist. of St. Louis County v. State Bank & Trust Co. of Wellston*, Mo.App., 282 S.W.2d 171, 175 (7); *McQuillin, Municipal Corporations*, 3rd Ed., Vol. 2, Sec. 7080, pp. 269, 270), nevertheless these facts do not exclude the City of St. Louis from cooperation with the Metropolitan St. Louis Sewer District, as provided in Sec. 3.020 (7) of the plan, nor do these facts prevent the city from entering into a contract such as was entered into between the city and the District on March 1, 1962, or from passing and putting into effect

on November 22, 1961, Ordinance No. 50678 of the City of St. Louis providing for the sale of the remaining unissued bonds, as authorized by the election held on August 1, 1944. We find nothing in the Plan of the Metropolitan St. Louis Sewer District, as adopted at the special election held on February 9, 1954, effective July 1, 1954, which prevents the issuance of the remaining bonds authorized in 1944, nor should the adoption of the mentioned Plan be held to prevent the city's cooperation with the new District. Appellant's first assignment must be and is over-ruled."

The holding of the Supreme Court in this case was not, in our view, based on the fact that the bonds were authorized prior to the creation of M.S.D., but were not issued until after such creation but was based on the fact that the provisions of the M.S.D. Plan, itself recognized the right of construction of sewer facilities by municipalities when authorized by statute or by charter. We believe such case is authority for holding that a bond issue of a city for payment of all or a part of the cost of construction of sewers within such city is authorized even though such city is now within M.S.D.

It follows that the City of Berkeley can within constitutional limits issue bonds for a part of the cost of construction of sewers to be jointly constructed and maintained under a cooperation agreement between M.S.D. and Berkeley.

In your third question you inquire whether Berkeley may apply a refund received by such City from M.S.D., in payment for transfer to M.S.D. by the city of a treatment plant owned by the City to pay for construction of sewers in a M.S.D. Sub-district located in a part of the City of Berkeley.

Section 12.090, of the M.S.D. Plan provides in part as follows:

"If the District shall at any time use any existing sewage treatment or disposal plant to serve any area or areas not situated within the boundaries of the municipality, sewer district, or other public agency which constructed said plant, and at such time said municipality, sewer district, or other public agency has outstanding and unpaid

any bonds which were issued wholly or partly for the construction of said plant, the Board shall ascertain what proportion of the proceeds of such bonds were expended for said plant. Thereafter and until such time as the District shall discontinue the use of said plant, a corresponding proportion of the remaining principal and interest charges on such bonds shall be borne by a subdistrict. Such subdistrict shall be established as provided in this Plan and shall include the area situated within said municipality, sewer district, or other public agency and any other area or areas served by said plant. The Board shall by ordinance impose the taxes or charges within the subdistrict necessary to pay such principal and interest."

It is our understanding that a sewage treatment plant belonging to Berkeley was transferred to M.S.D., and that such sewage treatment plant had been constructed from part of the proceeds of a City of Berkeley Sewer Bond Issue and under the provisions of Section 12.090 of the M.S.D. Plan, M.S.D. agreed to make payment of a portion of the outstanding bonds of the City.

It is not clear to us whether the contract between Berkeley and M.S.D., under the provisions of Section 12.090, of the M.S.D. Plan provides that M.S.D. shall pay to the City an annual sum or whether the contract provides that M.S.D. will pay such sum of money directly to bond holders of the Berkeley Sewer Bonds.

If the contract provides that Berkeley receives a certain amount of money from M.S.D., which is placed in the general revenue of Berkeley, such funds can be spent by the city for all or part of the cost of construction of sewers as is pointed out in the answer to the first two questions.

If the contract provides that M.S.D. is to pay such sum directly to the holders of Berkeley Sewer Bonds, then such funds do not ever become City Funds and cannot be spent to pay for the cost of the construction of sewers.

It is the view of this office that the Constitutional Charter City of Berkeley which is within the Metropolitan St. Louis Sewer District may contract with the District to pay a portion of the cost of constructing sanitary sewers within such City. It is further the opinion of this office that the City of Berkeley may issue bonds to pay part of the cost of construction of sanitary sewers within

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such City in cooperation with the Metropolitan St. Louis Sewer District.

It is further the opinion of this office that the City may build sewers from monies in the general revenue but such City cannot expend for sewers monies paid directly to the holders of city sewer bonds by the Metropolitan St. Louis Sewer District.

Yours very truly,

NORMAN H. ANDERSON
Attorney General

CEB:fs