

PUBLIC WATER SUPPLY
DISTRICTS:
WATER CODES:
ST. LOUIS COUNTY:

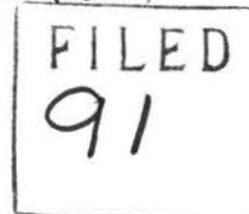
Public Water Supply District No. 1 in St. Louis County, including only unincorporated territories of the county, organized under Sections 247.010 to 247.220, RSMo 1959, can set up plumbing code regulations which are incident and necessary to the operation of

the water district. However, such regulations cannot abrogate or contradict any of the provisions of the existing county plumbing code which has been adopted by the St. Louis County Council pursuant to the Constitutional Charter of St. Louis County and Sections 341.090 to 341.220, RSMo 1959.

OPINION NO. 91
NO. 420 (1967)

February 6, 1968

Honorable Eric F. Fink
Representative--46th District
St. Louis County
1325 Froesel Drive
Ellisville, Missouri 63011



Dear Representative Fink:

This is in response to your letter of October 6, 1967, requesting an opinion from this office concerning St. Louis County Public Water Supply District No. 1. The facts are as follows:

Public Water Supply District No. 1, organized under the provisions of Chapter 247, is in the unincorporated part of St. Louis County and was formed to provide public water service for areas that had previously relied on private water supplies because they were not served by the St. Louis County Water Company. St. Louis County has an office of Plumbing and Sewer Inspection established pursuant to the provisions of the Charter for St. Louis County and Sections 341.090 to 341.220, RSMo 1959. That office has the responsibility of issuing permits before any construction, alteration or repairs can be made on public or private water and sewage systems and of enforcing the plumbing code adopted by the St. Louis County Council. The plumbing code contains regulations relating to the operation, installation and inspection of water and sewer systems. This code governs water and sewer facilities in all unincorporated areas of St. Louis County and in those municipalities which do not have their own regulations governing plumbing, sewer and water regulations.

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Public Water Supply District No. 1 will buy water from the St. Louis County Water Company but they will have their own system of distribution facilities and waterworks. The water district wants to set up a complete plumbing code which would include inspection provisions, designation of types of construction material to be used, issuance of permits and all else pertaining to the operation of the water district. The question is, can the board of directors of the water district set up their own plumbing code under Sections 247.010 to 247.220, RSMo 1959, or must they follow the plumbing code presently established for St. Louis County by the County Council?

Public water supply districts are formed under the authority of Chapter 247, RSMo 1959. Section 247.020 states that these districts " * * * shall have and be invested with all the powers conferred upon them by the provisions of Sections 247.010 to 247.220 and no other." The powers of the water district are limited to those conferred by the relevant sections of Chapter 247. If the district has power to draw up a plumbing code, that power must come either expressly or impliedly from these statutory sections.

Section 247.050, RSMo 1959, sets forth the powers of public water supply districts. Those most relevant to our question are found in the following subsections:

"(5) To build, acquire by purchase or otherwise, enlarge, improve, extend and maintain a system of waterworks, including fire hydrants;

* * * * *

(8) To lease, acquire and own any and all property, equipment and supplies needed within or without the district in the successful operation of a waterworks system;

* * * * *

(10) To acquire by purchase or otherwise, a system of waterworks, and to build, enlarge, improve, extend and equip such system for the uses and purposes of the district;

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(13) To purchase equipment and supplies needed in the operation of the water system of the district; * * *

* * * * *

(15) To sell and distribute water to the inhabitants of the district and to consumers outside the district, delivered within or at the boundaries of the district;

* * * * *

(17) To make general rules and regulations in relation to the management of the affairs of the district. (Emphasis added)

A water district is designated as a political corporation in the statutes and can be considered to be a municipal corporation in the broad sense which is sometimes attributed to that term. State vs. Kansas City Power and Light Company, 145 S.W. 2d 116. As a general rule, municipal corporations have powers which are expressly granted them and also those which are incidental to the powers expressly granted and absolutely essential to the purposes of the corporation. State vs. North Kansas City, 228 S.W. 2d 762. Section 247.050, RSMo 1959, and other sections which relate to the power of county water districts, make it clear that the water district board of directors is to have control of all facets of the water district's operation. It is evident that the board of directors has a wide range of responsibility in making sure that the operations of the water district function smoothly. On this point, we hold that a public water supply district does have power to make reasonable rules and regulations in the management of the water district.

Sections 341.090 to 341.220, RSMo 1959, are designated as a "Uniform Plumbing Code" which may be adopted by counties of the first class. Section 341.130, RSMo 1959, states:

"For the purpose of promoting health, safety and the general welfare and to carry into effect the purposes and provisions of sections 341.090 to 341.220, the county court is hereby empowered to adopt by order rules and regulations for the installations and inspections of all public or private water or plumbing facilities and appurtenances and all installations relating thereto, * * * ."

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St. Louis County, which has a constitutional charter form of government, has a county council instead of a county court. In addition to having power stemming from the constitutional charter which an ordinary county court does not have, the county council also exercises the normal statutory powers of a county court. Readey vs. St. Louis Water Company, 352 S.W. 2d 622.

St. Louis County has established plumbing code regulations pursuant " * * * to the provisions of the Charter for St. Louis County and Chapter 341, R.S.Mo., 1959". Section 1103.030, Revised Ordinances of St. Louis County. Neither such code nor the provisions of Chapter 247 exempt public water supply districts from the effect of the county water code regulations. Those installing a water system in a water supply district in St. Louis County have to get a permit from the Office of Plumbing and Sewer Inspection and have to abide by the rules and regulations set forth in the county plumbing code. The county plumbing code contains extensive rules and regulations governing the construction, installment and repairs of plumbing facilities. It also provides for inspection of installations, equipment and materials.

A plumbing code set up by Public Water Supply District No. 1 under its statutory authority, would be void where its regulations conflicted with those of the existing county water code. The water supply district is necessarily subordinate to the county. Any regulations promulgated by the water district under Chapter 247 must be consistent with the provisions of the county charter. In the case of State vs. Gamble, 280 S.W. 2d 656, 1.c. 660, the Supreme Court said:

"[4,5] Moreover, charter counties are endowed with some of the powers and functions of a municipal corporation in the area outside incorporated cities. They are empowered to exercise legislative power pertaining to public health, police and traffic, building construction, and planning and zoning in such areas. Section 18 (c), supra. These are police powers ordinarily vested in municipal corporations. See, for example, Sections 73.010 and 73.110 RSMo 1949, V.A.M.S., relating to the organization and powers of cities of the first class. A county under the special charter provisions of our constitution is possessed to a limited extent of a dual nature and functions in a dual capacity. It must perform state functions over the entire county and may perform functions of a

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local or municipal nature at least in the unincorporated parts of the county. These are constitutional grants which are not subject to, but take precedence over, the legislative power. * * * "

However, the water supply district is not precluded from making plumbing code regulations which are not in conflict with those laid down by the county. Vest vs. Kansas City, et al., 194 S.W. 2d 38. The public water supply district must follow the existing plumbing code where it is applicable, but may set up regulations which do not in any way contradict or conflict with the regulations of the county code. It is our opinion that the public water supply district could institute a plumbing code which was designed to supplement the existing county plumbing code as long as it did not conflict with any of the provisions of the existing code.

CONCLUSION

It is the opinion of this office that Public Water Supply District No. 1 in St. Louis County, including only unincorporated territories of the county, organized under Sections 247.010 to 247.220, RSMo 1959, can set up plumbing code regulations which are incident and necessary to the operation of the water district. However, such regulations cannot abrogate or contradict any of the provisions of the existing county plumbing code which has been adopted by the St. Louis County Council pursuant to the Constitutional Charter of St. Louis County and Sections 341.090 to 341.220, RSMo 1959.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Gary G. Sprick.

Very truly yours,


NORMAN H. ANDERSON
Attorney General