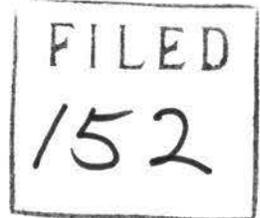


FOURTH CLASS CITIES:
CITIES, TOWNS, AND VILLAGES:

A fourth class city can legally engage in the operation of an intra-city bus system and can make use of surplus city funds if additional revenue would be required.

OPINION NO. 152

February 6, 1968



Honorable E. J. Cantrell
State Representative - District 33
Missouri House of Representatives
Capitol Building
Jefferson City, Missouri 65101

Dear Representative Cantrell:

You have requested this office for an opinion concerning the power of a fourth class city to engage in the operation of an intra-city bus system which operation would contemplate the use of city funds if additional revenue would be required.

The powers of a municipality are derived from a delegation of power by the state. A fourth class city has only those powers conferred by the state in statutes. State ex rel. City of Republic v. Smith, 345 Mo. 1158, 139 S.W.2d 929.

The question with which you are concerned seems to be sufficiently covered by Section 91.450, RSMo 1959, pertinent portions of which follow:

"Any city of the third or fourth class, and any town or village, and any city now organized or which may hereafter be organized and having a special charter, and which now has or may hereafter have less than thirty thousand inhabitants, shall have power to erect or to acquire, by purchase or otherwise, maintain and operate, waterworks, gas works, electric light and power plant, steam heating plant, or any other device or plant for furnishing light, power or heat, telephone plant or exchange, street railway or any other public transportation, conduit system, public auditorium or convention hall, which are hereby declared public utilities, and such

Honorable E. J. Cantrell

cities, towns or villages are hereby authorized and empowered to provide for the erection or extension of the same by the issue of bonds therefor * * * "

This section undoubtedly empowers the fourth class city to operate the contemplated bus system under the phrase "any other public transportation".

The question arises as to whether city funds could be used if additional revenue would be required. There appears to be no reason why this could not be done. Section 91.450, RSMo 1959, is silent on the subject except that the city is "authorized and empowered to provide for the erection and extension of same by the issue of bonds therefor".

In an Attorney General Opinion, dated April 18, 1956, (#41-Holman), the question was posed: may money in the general fund of a Fourth class city be used to purchase land to be used for a city hall or playground site? The opinion makes the following observations:

"This writer believes that the case of Decker vs. Diemer, 229 Mo. 296, 129 S.W. 936, even though the question therein concerned the authority of the county court to use surplus county funds, can be cited as authority for holding that the payment of land to be used for a city hall or playground site can be made from the general fund. Involved in the case was the transfer of surplus funds of the county to a courthouse fund for the purpose of constructing a courthouse. The court held that the transfer was not improper. Admitting that the statutes involved in the case were different from those involved in the question with which we are concerned in that the transaction was on the county level, yet the reasoning of the court can be applied to the question at hand. The court at l.c. 336, of the official report said:

' * * * We are further of the opinion that when all warrants and debts properly chargeable to a fund in any one year are paid and provided for, the residue of such fund is a "surplus"

Honorable E. J. Cantrell

within the purview of the transfer sections. Is not the building of a courthouse as legitimate as any other county purpose? Are bonds so desirable that the people of a Missouri county must bond themselves when bonds are not necessary, or go without a courthouse? Must they levy special taxes when they have the means in the treasury to avoid such special levy? Running like a thread through the statutes is the idea of as low a rate of taxation as is compatible with the welfare of people, and the other idea that the county's business must be done for cash. All these ideas are conserved by the holding made.'

"There being no earmarking of the money in the general fund for any particular purpose, and no statutory provision as to the source from which payment for such land is to be made, the board of aldermen may use money in the general fund for the purpose of purchasing a tract of land to be used for a city hall or playground site." (Emphasis ours)

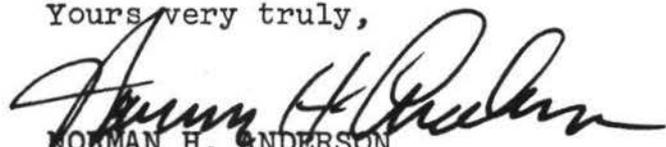
Furthermore, in Mathison v. Public Water Supply District No. 2, 401 S.W.2d 424, the court said that the grant of power to acquire a water system carries with it, by necessary implication, the authority to use money on hand as the means of payment and that it was not necessary that the city incur as indebtedness in order to acquire the water system. It follows that if the city maintains adequate funds to operate the bus system, there would seem to be no reason for the use of the bond issue. Subject to Section 94.250, RSMo 1959, establishing the maximum rate of tax, the city may operate the bus system even though the operation would contemplate the use of city funds if additional revenue were required.

CONCLUSION

A city of the fourth class can legally engage in the operation of an intra-city bus system, which operation would contemplate use of city funds if additional revenue would be required.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, J. Steve Weber.

Yours very truly,


NORMAN H. ANDERSON
Attorney General