

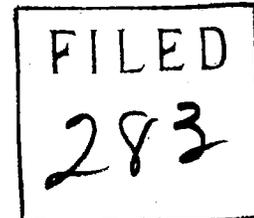
CITIES, TOWNS & VILLAGES:
SEWERS:
MUNICIPAL CORPORATIONS:
TAXATION:

Third class city with existing sewer and disposal plant may establish general sewer system under 88.832 RSMo 1959, and the city council may levy the tax authorized thereunder. Such tax may be in excess of the constitutional limit for general municipal purposes.

OPINION NO. 283

August 28, 1969

Senator William J. Cason
Senate Post Office
State Capitol Building
Jefferson City, Missouri 65101



Dear Senator Cason:

This is in response to your request for an opinion concerning the following matters:

1. Can a third class city with an existing sewer system and disposal plant establish a general sewer system under section 88.832 RSMo 1959 and levy a tax on the property in the city?
2. Can the tax imposed under section 88.832, RSMo 1959, be imposed either by the city council or by a vote of the people? If a vote of the people is permitted, does the imposition of the tax require a two-thirds majority?
3. May the tax under section 88.832, RSMo 1959, be larger than the existing limitation of \$1.00 per \$100.00 assessed valuation?

I

Section 88.832, RSMo 1959, gives third class cities authority to establish and operate a sewer system. The apparent purpose of this statute is to enable municipal corporations to deal most efficiently and effectively with their waste disposal problems. Such statutes are construed liberally and in conformity with the accomplishment of their purpose. In re East Bottoms Drainage and Levee District, 305 Mo. 577, 259 SW 89 (1924).

The provision authorizing the establishment of a general sewer system, section 88.832 RSMo 1959, provides:

"The governing body of any municipality shall have power to cause a general sewer system to be established, which shall be composed of four classes of sewers, to wit, public, district, joint district and private sewers. Public sewers shall be established, along the principal courses of drainage, at such time, to such extent, of such dimensions, and under such

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regulations as may be provided by ordinance. These may be extensions or branches of sewers already constructed or entirely new throughout, as may be deemed expedient. The municipality may levy a tax on all property made taxable for state purposes over the whole municipality to pay for the constructing, reconstructing and repairing of the work, which tax shall be called "special public sewer tax" and shall be of the amount as may be required for the sewer provided by ordinance to be built; and the fund arising from the tax shall be appropriated solely to the constructing, reconstructing and repairing of the sewer.

Section 88.832 speaks of three things: a sewer system, which includes four classes of sewers, sewers and a tax. The section provides that "public" sewers are to be established, and may be either "entirely new throughout" or "extensions or branches of sewers already constructed." Hence, the system produced must of necessity include the sewer system to which such new public sewers are "extensions or branches." This means that a general, public sewer system which was in existence and operation before new public sewers are constructed under 88.832 may nevertheless be part of the "general sewer system" provided for in that section. There is no requirement that new construction be planned or in progress at the time the city provides for the adoption of a "general sewer system" as set forth in section 88.832. Nor would an exclusion of the cities with sewer systems already in existence but nevertheless in need of expansion from the provisions of this section be consistent with its purpose--to provide a more effective means for the financing of a highly efficient sewer system.

The tax, it is stated in Section 88.832 is to "pay for the constructing, reconstructing and repairing of the work," and is to be in only such amount as "may be required for the sewer provided by ordinance to be built." The funds from the tax may "be appropriated solely to the constructing, reconstructing and repairing of the sewer." The question is whether "the work," "the sewer provided by ordinance to be built" and "the sewer" refer only to the new portions of the system constructed after the establishment of the general sewer system under section 88.832, or to all portions of the sewer system, old and new. Clearly, the taxing provisions of section 88.832 were meant to make it easier for a city to finance the maintenance and extension of its sewer systems in order to provide the best kind of service to its inhabitants. It is consistent with this goal to interpret the language of section 88.832 to include repair and reconstruction of old sewers which are part of the general sewer system. As needs in cities grow for expanded sanitation services, new sewers may have to be built, and the expanding system may be constructed, reconstructed and repaired with tax funds collected under the authority of section 88.832, RSMo 1959.

II

Section 88.832 gives authority to the municipality's governing body to impose the tax provided for in this section. No vote of the people is called for and no authority is given the citizens of a municipality as such to impose the tax. Under section 1 of Article X of the Constitution the general assembly may delegate the power to tax for certain purposes to "counties and other political

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subdivisions." The term "political subdivision" is defined in Section 15 of Article X as including "townships, cities, towns, villages, school, road, drainage, sewer and levee districts and any other public subdivision, public corporation or public quasi corporation having the power to tax." The delegation to such political subdivision must be construed according to its terms, and in this case, the delegation is specifically to the government of the municipality affected. Hence, only the governing body may impose the tax under Section 88.832.

III

Section 11 of Article X of the Constitution of Missouri provides that the tax imposed on property by municipalities for general municipal purposes shall not without a vote by the electors exceed \$1.00 per \$100 valuation provided that municipalities when authorized by law and within the limitation fixed by law may levy a rate of taxation in excess of the rates so limited for libraries, hospitals, public health, recreation grounds and museum purposes.

Section 94.070 RSMo provides in part as follows:

"In addition to the levy aforesaid for general municipal purposes, all cities of the third class are hereby authorized to levy annually not to exceed the following rates of taxation on all property subject to its taxing power for the following special purposes:

(2) For hospitals, public health, and museum purposes twenty cents on the one hundred dollars assessed valuation; and * * *

Construction, reconstruction and repairing of sewers clearly constitutes a public health service.

Under provisions of Section 94.070, therefore, a tax not to exceed 20¢ on the \$100 valuation may be levied in addition to the \$1.00 tax levy for general municipal purposes the proceeds to be used for the reconstruction and repair of public sewers as provided in section 88.832 RSMo.

CONCLUSION

It is the opinion of this office that:

1. A third class city with an existing sewer system and disposal plant in operation may establish a general sewer system under section 88.832 RSMo 1959, and levy a tax on the taxable property in the city under that section.

2. The tax under section 88.832 may be imposed only by the city's governing body.

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3. A tax levy not to exceed 20¢ on the \$100 valuation may be levied by a third class city in addition to the \$1.00 tax levy for general municipal purposes the proceeds to be used for the construction, reconstruction and repair of public sewers as provided in section 88.832 RSMo.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth".

JOHN C. DANFORTH
Attorney General