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ATTORNEY GENERAL OF MISSOURI

JEFFERSON CITY

November 9, 1972

OPINION LETTER NO. 287

Mr. Jack K. Smith, Executive Secretary
Missouri Clean Water Commission
Room 102 - State Capitol Building
Jefferson City, Missouri 65101

Dear Mr. Smith:

This letter is in response to your opinion request inquiring about the need to amend Senate Committee Substitute for Senate Bill No. 424, 76th General Assembly, Second Regular Session, known as the Missouri Clean Water Law. Specifically, you ask whether the Missouri Clean Water Commission may under this Missouri Clean Water Law require political subdivisions of this state to provide any of the twenty-five percent share of the reasonable cost of water pollution control projects not paid for by federal grants under the Federal Water Pollution Control Act Amendments of 1972. You state this would be done by the Missouri Clean Water Commission's designating the state's share to be less than twenty-five percent of such cost. Previously, the maximum federal share provided was fifty-five percent, thus leaving the local political subdivision with a contribution of at least twenty percent after the state provided its share up to a maximum contribution of twenty-five percent.

Section 202 of the Federal Water Pollution Control Act Amendments of 1972, designated "federal share" provides that the amount of any federal grant under this new act shall be seventy-five percent of the cost of construction. It is silent as to how the other twenty-five percent shall be provided, and therefore the federal law contains no requirements that the state legislature enact legislation requiring that a certain percentage be provided each by the state and its political subdivisions. Both the U. S. Senate Bill and the House Amendment, in provisions replaced by the final conference substitute, would have provided that the states contribute at least a certain portion of the nonfederal twenty-five percent in order for the project to be eligible for the maximum federal

share. However, the deletion of these provisions in the final conference substitute leaves the matter entirely up to the states and whatever agencies the state may designate to determine whether local political subdivisions shall supply any portion of the nonfederal twenty-five percent.

As you point out in your letter requesting the opinion, the Missouri statutes provide in Section 204.106 of the Missouri Clean Water Law that the "state's contribution toward the cost of such water pollution control projects shall not exceed twenty-five percent of the estimated reasonable cost thereof". This is to be read in conjunction with Section 204.111 of the Missouri Clean Water Law that the "[Clean Water] commission is the agency for the administration of such funds as are granted by the state for this program. The administration of the granted funds shall be done in direct conjunction with the administration of federal funds granted for water pollution control projects . . . ." This indicates that the Missouri Clean Water Commission is to administer state funds in conjunction with the federal law which makes no requirements as to the division of the twenty-five percent. It seems clear that this would leave the percentage division of the nonfederal twenty-five percent up to the Clean Water Commission. Section 204.101 of the Missouri Clean Water Law also speaks of making grants without setting forth any requirement that the state and local subdivision each provide certain percentages.

This grant of authority to the Clean Water Commission is also clearly set out in Section 204.026.10 of the Missouri Clean Water Law that the Commission shall "[A]dminister state and federal grants to municipalities and political subdivisions for the planning and construction of sewage treatment works;". The comprehensive nature of the authority granted the Clean Water commission in this area is further emphasized by Section 204.136 which provides that the Clean Water Commission is designated as the water pollution agency for the state of Missouri and,

> ". . . for all purposes of any federal water pollution control act . . . may:
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> "(1) Take all necessary or appropriate action to obtain for the state the benefits of any federal act;
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> "(2) Apply for and receive federal funds made available under any federal act;
>
> "(3) Approve projects for which loans or grants under any federal act are made to any municipality or agency of the state;"

When examining the words of the Missouri Clean Water Law to determine the breadth of the grant of authority to the Clean Water Commission concerning application of state grant funds, the legislature used the terms "administer" and "administration" to describe this authority. This term is susceptible of many meanings and because of this susceptibility to broad interpretation does not lend itself to a narrow or technical grant of power. Had the legislature been concerned that the Clean Water Commission's duties would be something less than just assuring that the state's portion not exceed twenty-five percent of the reasonable estimated cost, it certainly would have said so in the Missouri Clean Water Law. Nowhere does this appear, and it certainly would have been careful to use more precise terms than "administer" and "administration."

Various courts have noted the broad interpretation of the terms "administer" and "administration" in the following cases: Glocksen v. Holmes, 299 Ky. 626, 186 S.W.2d 634 (1945); Christgau v. Fine, 223 Minn. 452, 27 N.W.2d 193 (1947); and In re Fleischer, 151 F. 81 (S.D.N.Y. 1907). These cases all note that the terms at issue connote the authority to control, manage, conduct or regulate, all broad grants of authority.

The use of the terms "administer" and "administration" by the legislature indicates positive intention that broad authority with respect to federal grants, including the division of the nonfederal twenty-five percent of the cost between the state and local sources, be given to the Clean Water Commission. In the past, the Missouri Clean Water Commission has allocated sums of money to various municipalities and other local governmental units from a lump sum grant given the Clean Water Commission by the state legislature for this purpose. This past practice on the part of the legislature indicates that it would also intend that the Clean Water Commission determine what percentage of the nonfederal twenty-five percent of the reasonable cost of the project would be provided by the state, up to twenty-five percent.

One of the major functions of the Missouri Clean Water Commission under the Missouri Clean Water Law is the effective administration of the state and federal grant programs. This is one of the most effective means the Commission has of abating pollution as directed by the Missouri Clean Water Law. It seems clear that the legislature contemplated that the Commission would make maximum effective use of this tool by the proper allocation of funds, both in dollar amounts and percentage divisions, for water pollution control projects. To determine otherwise would drastically reduce the Commission's ability to prevent, control and abate existing or potential pollution as charged by the Missouri Clean Water Law.

Another consideration supporting this interpretation of the Commission's authority to administer funds is the vast amount of detailed work required to carry out today's complicated legislative programs. The legislature must rely on state agencies to carry on its programs or it would soon become bogged down in a morass of details and thus drastically reduce the effectiveness of its own programs. It is not logical to assume that by the use of the words "administer" and "administration" the legislature intended for the Clean Water Commission to work out some of the details of the grant administration program, and yet leave others, nowhere designated, to the attention of the legislature itself.

Finally, the Missouri Supreme Court in Arkansas-Missouri Power Corporation v. City of Kennett, 349 Mo. 173, 159 S.W.2d 782, 784 (1942) quoted with approval from a case involving the issuance of bonds at an interest rate less than the maximum established by ordinance for the issuance of bonds:

> "'It is urged that the discretion vested in the mayor as to whether the bonds shall bear interest at 5 or 4 per cent. is a delegation of legislative power, and therefore the ordinance is void. The council had fixed the maximum rate of interest at 5 per cent., but said to the mayor: "If you can sell the bonds at a lower rate of interest it is your duty to do so."
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> "'If the agent exceeds the authority given him by making the bonds bear a larger rate of interest than authorized by the ordinance, his act would be void; but, when he protects the interest of his principal by making a better bargain than authorized, his action is to sustained, because it benefits the party for whom he is acting.'" Frantz v. Jacob, 88 Ky. 525, 11 S.W. 654 (1889)

Therefore, so long as the Missouri Clean Water Commission does not allocate state funds which exceed the twenty-five percent of the estimated reasonable cost of the water pollution control project as limited by Section 204.106, RSMo, it is the opinion of this

office that the Commission has the authority to determine what percent of the nonfederal funds is to be provided by both the state and by municipalities or other local governmental units.

Yours very truly,

JOHN C. DANFORTH
Attorney General