WATER POLLUTION:
SEWERS:

Municipalities and sewer districts have authority to make the user charges to industries required by the Federal Water Pollution Control Act Amendments of 1972 and to establish the reserves for future expansion or reconstruction.

OPINION NO. 229

August 20, 1973

FILED
229

Mr. Jack K. Smith, Executive Secretary
Missouri Clean Water Commission
Post Office Box 154
Jefferson City, Missouri 65101

Dear Mr. Smith:

This official opinion is issued in response to your request received by this office on June 19, 1973.

As we understand the situation, the basis for your request is the fact that the new Federal Water Pollution Act Amendments of 1972 require that public sewage treatment facilities make certain charges to industrial users and establish certain reserve or sinking funds with portions of these charges to be used for future expansion and reconstruction of the project. To quote from your opinion request:

> "Section 204 of the Federal Water Pollution Control Act Amendments of 1972 (Public Law 92-500) requires grantees to recover from industrial users of such treatment works that portion of the federal share of project costs allocable to industrial use; makes further requirements with respect to user charges; and provides for retention by the grantee of a portion of revenues derived from the payment of costs by industrial users, further requiring that a certain portion of the retained revenues be used solely for the purposes of future expansion and reconstruction of the project.
>
> "Proposed Environmental Protection Agency regulations published May 22, 1973, to implement the cost-recovery and requirement,

> would require grantees to set aside at least 80 percent of the amounts retained pursuant to section 204(b)(3) for such future expansion and reconstruction.
>
> "Does the Missouri law authorize or permit municipalities or other governmental units, such as sewer districts which might receive grants, to establish sinking funds or other segregated accounts to be held separately for eventual expenditure for expansion or reconstruction of the treatment works? Should or could a particular class of municipality establish its authority in this regard by charter ordinance, and is there a possibility of finding authority in acts enabling municipalities to obtain federal grants by complying with federal requirements?"

Senate Bill No. 321 of the 77th General Assembly, effective July 23, 1973, the date of its approval by the Governor, which is also known as the Missouri Clean Water Law, provides in Section 204.026(18) that the Clean Water Commission shall:

> "Require that all publicly owned treatment works or facilities which receive or have received grants from the state or the federal government for construction or improvement, make all charges required by this act or any federal water pollution control act for use and recovery of capital costs, and the operating authority for such works or facility is hereby authorized to make any such charges; . . ." (Emphasis added)

Chapter 250, RSMo, provides authority, in addition to any specific grant of power elsewhere in the Revised Statutes to all cities, towns, villages, whether organized under general law or by special charter or constitutional charter, and to any sewer district organized under Chapter 249, RSMo, to acquire, construct, improve or extend and to maintain and operate a sewage system and provide funds for the payment of the cost of such acquisition, construction, improvement or extension in operation of the system. That chapter contains several provisions which bear on the question.

Subsection 1(2) of Section 250.150, RSMo, declares that the rates and charges collected for sewer services:

> ". . . shall be devoted, first, to the payment of the expenses of operating and maintaining such system; second, to the payment of any and all bonds or other obligations payable from such revenue; third, to the establishment of a proper depreciation reserve for the benefit of such system; fourth, to the fulfillment of any covenants or agreements contained in any ordinance which may have authorized outstanding revenue bonds issued for the benefit of such system and, fifth, for the payment of the cost of improvements and extensions to such system."

Section 250.240, RSMo, provides:

> "It is the purpose of this chapter to enable cities, towns and villages and sewer districts to protect the public health and welfare by preventing or abating the pollution of water and creating means for supplying wholesome water, and to these ends every such municipality and sewer district shall have the power to do all things necessary or convenient to carry out such purpose, in addition to the powers conferred in this chapter. This chapter is remedial in nature and the powers hereby granted shall be liberally construed."

Section 250.250, RSMo, indicates that the chapter is an additional grant of power and is not intended to repeal or modify any power otherwise granted by the statutes or Constitution or any special charter or constitutional charter. It concludes with the statement that:

> ". . . This chapter, without reference to any other chapter, shall be deemed sufficient authority for the exercise of any powers granted herein, and all powers necessary to effectuate the purposes of this chapter shall be deemed to be granted hereby."

In addition, Section 250.230, RSMo, provides that these governmental bodies are authorized to enter into contracts with any industry for the payment by that industry of:

> ". . . amounts at least sufficient, in the determination of such governing body, to

> compensate the municipality for the cost of providing (including payment of principal and interest charges, if any), and of operating and maintaining the sewage facilities serving such industrial establishment."

We assume that the requirement that a specified percentage of revenues be retained for expansion and reconstruction in accord with the federal law and regulations will not conflict with the priorities established under Section 250.150, RSMo.

CONCLUSION

Therefore, it is the opinion of this office that municipalities and sewer districts have authority to make the user charges to industries required by the Federal Water Pollution Control Act Amendments of 1972 and to establish the reserves for future expansion or reconstruction.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Robert M. Lindholm.

Very truly yours,

JOHN C. DANFORTH
Attorney General