

SEWERS:
SEWER DISTRICTS:
COOPERATIVE AGREEMENTS:
COUNTY COURT:
SEWER SUBDISTRICTS:

A county court may create a sewer subdistrict pursuant to Sections 204.331 and 204.332, RSMo Supp. 1973, and such subdistrict shall have, in addition to those powers specified

in Section 204.331, the powers given to sewer districts under Sections 249.430 to 249.660, RSMo 1969. However, in the creation of such a sewer subdistrict under Section 204.331, et seq., the county court must comply with the provisions of Sections 249.470 and 249.480, RSMo 1969. If such a sewer subdistrict is created, the county court, as governing body of the sewer subdistrict, may enter into a contract with a common sewer district created pursuant to Section 204.250, RSMo Supp. 1973, and Sections 204.260 to 204.470, RSMo 1969, whereby the common sewer district would provide any engineering, construction, maintenance, repair and administrative services required for the collection and treatment of sewage generated within the subdistrict.

OPINION NO. 70

April 3, 1975

Honorable James F. McHenry
Cole County Prosecuting Attorney
Room 400 - Courthouse
Jefferson City, Missouri 65101



Dear Mr. McHenry:

This is in response to an opinion request made by you, asking three questions. Your first question asks:

"May a county court create a sewer subdistrict pursuant to Section 204.331, et seq., RSMo Supp. 1973, having the powers given to sewer districts under Sections 249.430 to 249.660, RSMo 1969?

Sections 204.331 and 204.332, RSMo Supp. 1973, to which you refer, provide:

"204.331 . . . The county court or county legislature, may in addition to all powers herein granted or implied, create a subdistrict or subdistricts within the county, which subdistrict, when created, shall be a body corporate and politic. Creation of the subdistrict or subdistricts shall

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be in the manner hereinafter provided, but in all other respects the administration and operation of the subdistricts shall be in the manner provided by sections 249.430 to 249.660, RSMo. Each subdistrict or subdistricts so created shall, in addition to the powers granted by sections 249.430 to 249.600, RSMo have the power and ability to contract with the trunk district herein created for the collection, transportation and treatment of sewage or any function associated therewith."

"204.332 . . . In lieu of the method of incorporation provided in sections 249.450 and 249.460, RSMo, subdistricts may be created in the following manner: Upon written recommendation of the county highway engineer, county sewer engineer, or director of public works; or upon petition of twenty percent of those persons residing within the area and owning property therein which will be liable to assessment for the construction and maintenance of a sewer system, setting forth generally the area to be included, the county court or county legislature shall adopt a resolution to establish the subdistrict and describing generally the size and location of the proposed subdistrict. The county court or county legislature may designate the highway engineer or director of public works as sewer engineer, or may retain the services of an engineer or firm of engineers as sewer engineers. The sewer engineer shall advise the county court with reference to proper boundaries of any subdistricts to be established and shall also superintend the construction of sewers and the maintenance thereof and the apportionment of the cost thereof as provided by law. The county court or county legislature shall also request the county clerk or other appropriate officer to appoint or designate a deputy to keep the special records which are required for the proceedings for the construction and maintenance of the sewer subdistricts or divisions."

We note that Section 204.331 expressly provides that the creation of a subdistrict should be in the manner provided in the following section, but in all other respects the administration and operation of the subdistrict shall be in the manner provided in Sections 249.430 to 249.660. This same section also provides that each subdistrict shall have certain powers, "in addition to the powers granted by Sections 249.430 to 249.660, RSMo. . . ."

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In answer to your first question, we interpret the quoted portions of Section 204.331 to provide that a county court may create a sewer subdistrict pursuant to Section 204.331, et seq., and that such sewer subdistrict shall have, in addition to those powers specified in Section 204.331, the powers given to sewer districts under Sections 249.430 to 249.660, RSMo 1969.

Your second question asks:

"If the answer to question 1 is yes, in the creation of such sewer subdistrict, must the county court comply with the provisions of Sections 249.470 and 249.480, RSMo 1969?"

Section 204.332, set out above, provides in part:

"In lieu of the method of incorporation provided in sections 249.450 and 249.460, RSMo, subdistricts may be created in the following manner"

Section 204.332 then sets out the manner in which a sewer subdistrict is created, including who may recommend or petition for its creation, the contents of the recommendation or petition, the resolution process for formal creation of the subdistrict, and the designation of a sewer engineer to superintend planning, construction and maintenance of sewers.

Sections 249.450 and 249.460 provide:

"249.450 . . . 1. In any county having not less than five hundred thousand and not more than seven hundred thousand inhabitants and in any county which adjoins or which contains a portion of a city having more than four hundred thousand inhabitants whenever a petition signed by a majority of the owners resident in a part of such unincorporated residence district is filed with the county clerk of any such county, or whenever such county courts shall deem the construction of sewers necessary for sanitary or other purposes, such county court after consultation with the sewer engineer shall adopt a resolution to establish such sewer district or districts and describing generally the size and location of the proposed sewer district or districts.

"2. In any county of classes two, three or

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four which are not subject to subsection 1, the county court of the county, upon the filing of a petition signed by a majority of the owners of a real estate in the proposed district, shall, after consultation with the sewer engineer, adopt a resolution to establish the sewer district and describing generally the size and location of the proposed sewer district."

"249.460 . . . Whenever the county court deems it necessary to provide for the construction of sewers as provided for in sections 249.430 to 249.660, it shall designate the county highway engineer as sewer engineer. The sewer engineer shall advise the county court with reference to proper boundaries of any sewer districts to be established and shall also superintend the construction of said sewers and the maintenance thereof and the apportionment of the cost thereof as provided by law. The county court shall also request the county clerk to appoint or designate a deputy county clerk to keep the special records which will, or shall be required for the proceedings for the construction and maintenance of sewer districts or divisions."

We note that Sections 249.450 and 249.460 parallel Section 204.332 in many respects. Section 249.450 sets out the methods whereby the creation of a sewer district is initiated (by petition, or on the motion of the county court in counties falling within subsection 1). Section 249.460 provides for the designation of a sewer engineer, provides that the sewer engineer shall advise the county court as to the boundaries of the sewer district and shall superintend construction, maintenance and apportionment of cost, and provides for the appointment of clerical help for the district via the county clerk.

We read Section 204.332 to cover the same matters as are covered in Sections 249.450 and 249.460. In addition, we note that both Section 249.450 and Section 204.332 contain language providing that the county court "shall adopt a resolution to establish the district [subdistrict] and describing generally the size and location of the proposed district [subdistrict]." Because of the basic similarity of language and content between Sections 249.450 to 249.460 and 204.332, we believe that the legislature intended that the latter section could be used as a substitute for the former two sections.

Section 204.332 makes no mention of Sections 249.470 and 249.480. Yet these two sections also set out certain provisions and conditions

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for the creation of sewer districts. Section 249.470 provides:

"The county court, after receiving the recommendations of the sewer engineer, may by resolution, establish the boundaries of the sewer district or districts including therein only such lots, tracts and parcels of ground which may be conveniently served by a sewer. The action of the county court in determining the boundaries of said sewer districts shall be conclusive, provided, that no ground shall be included in the sewer district not contained in the natural drainage area or watercourse, or may be conveniently served through said sewer."

We note that this section makes provision for the establishment of definite boundaries for a sewer district, and further provides that such boundaries may be established only after the county court receives the recommendations of the sewer engineer. Yet Section 204.332 does not make, nor does any other section in Chapter 204 make provision for the setting of definite and certain boundaries for a sewer subdistrict.

Section 249.480 provides:

"1. The county court shall set a day for hearing anyone who might be interested with regard to said proposed work and shall publish said resolution with a notice of the time and place of hearing in some local newspaper of general circulation, published in the county, and if possible in the district affected by the resolution, and designated by the county court, at least two weeks before the date of the hearing, and by posting a copy of said resolution in five public places in said proposed sewer district or districts. At such hearing anyone interested in the proposed construction or operation of sewers may appear and present his views to the county court.

"2. Unless a majority of the owners of land within said sewer districts shall file a protest in writing with the county clerk on or before the day set for a hearing, the county court may proceed with the construction of the sewers. If such a majority protest is filed the county court shall have no authority to proceed with said work unless the state board of health or its authorized repre-

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sentative files with the county clerk of the said county a written recommendation that such sewer is necessary for sanitary or other purposes, in which case the county court shall have the right to proceed as if no protest had been filed. The determination of the county court as to the sufficiency of any protest shall be conclusive unless said determination is attacked by a proceeding in the circuit court within ten days after such determination. After the expiration of six months after the filing of any such protest a new resolution may be adopted if deemed necessary by the county court."

We note that this section, most importantly, provides for a public hearing and an opportunity for a majority of the landowners in a sewer district to protest the construction of sewers, before such construction is undertaken by the county court. However, we note that Sections 204.331 and 204.332 make no provision for, or mention of, a public hearing or opportunity for a majority of the residents or landowners in a sewer subdistrict to voice their opposition to the proposed construction of sewers. This factor becomes particularly important when we consider that Section 204.332 changed the petition requirements from a majority of the owners of real property within a proposed district to twenty percent of the resident landowners in a proposed subdistrict.

It is apparent that Sections 249.450 and 249.460 do not provide a complete method of incorporating sewer subdistricts, because an inherent part of the incorporation process is found in other sections, that is, Sections 249.470 and 249.480. In view of the fact that Section 204.332 provides only an alternative procedure for the procedures found in Sections 249.450 and 249.460, we believe that the requirements of Sections 249.470 and 249.480 must be complied with before a sewer subdistrict can be incorporated under the provisions of Sections 204.331 and 204.332.

Your third question asks:

"If such a sewer subdistrict is created, may the county court enter into a contract with a common sewer district formed pursuant to Section 204.250, RSMo Supp. 1973 and Sections 204.260, et seq., RSMo 1969, whereby such common sewer district would provide engineering, construction, maintenance, repairs and administrative services in connection with the operation of the sewer subdistrict?"

Section 204.331 authorizes contracts between sewer subdistricts and common sewer districts. It provides:

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". . . Each subdistrict or subdistricts so created shall, in addition to the powers granted by sections 249.430 to 249.660, RSMo, have the power and ability to contract with the trunk district herein created for the collection, transportation and treatment of sewage for the collection, transportation and treatment of sewage or any function associated therewith."

We read the words "collection . . . of sewage or any function associated therewith" to refer to the entire process of sewage collection, from the home or business to the trunk lines, including operation and maintenance of the individual collection lines and incidental functions associated therewith. We believe such incidental functions would reasonably include the collection of service charges and the provision of administrative personnel and services to collect such charges.

Our interpretation of the language found in Section 204.331 is compelled by the use of the words "collection sewers" in the statutes relating to common sewer districts. In Section 204.330.2, after providing that the Board of Trustees of the common sewer district may enter into agreements with municipalities, subdistricts and private districts with regard to the regulation of the discharge of sewage from the sewer system of such entity, the legislature provided:

". . . Each municipality, or subdistrict or private district shall control the discharge of wastes into its collection sewers to the extent necessary to comply with the agreement. . . ." [Emphasis added.]

Additionally, reference is made in Section 204.310 to municipalities, subdistricts and private districts which operate a "sewage collection system which will discharge sewage into the trunk sewers or sewage facilities of the common sewer district." [Emphasis added.]

We interpret the term "collection sewers", as used in these statutes, to mean all of the system of sewer mains and laterals tributary to the trunk sewers. Therefore, we believe the reference to "collection . . . of sewage or any function associated therewith", as used in Section 204.331, to be intended by the legislature to include all those facilities, functions and services normally associated with the movement of sewage from the source thereof to the trunk line leading to the treatment plant.

In answer to your third question, we interpret Section 204.331 to empower a sewer subdistrict created pursuant to that Section to enter into a contract with a common sewer district created pursuant to Section 204.250, et seq., whereby the common sewer district would provide any

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engineering, construction, maintenance, repair and administrative services required for the collection and treatment of sewage generated within the subdistrict.

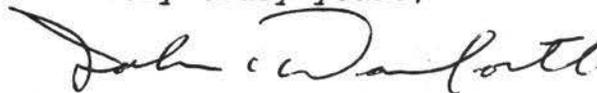
We note that your question asks whether the county court may enter into a contract with a common sewer district, whereas Section 204.331 empowers the sewer subdistrict to contract with a common sewer district. This same section provides that the sewer subdistrict, once created, is a body corporate and politic. Therefore, the subdistrict exercises its functions and powers in its own name, through the action of its duly authorized governing body. However, no governing body is provided in Sections 204.331 and 204.332 for sewer subdistricts. Instead, Section 204.331 provides that "the administration and operation of the subdistricts shall be in the manner provided by sections 249.430 to 249.660, RSMo." The language of Sections 249.430 to 249.660 leaves no doubt that the county court is to act as the governing body of sewer districts (in this case, subdistricts). Therefore, in entering into any contract, the county court, as governing body of the sewer subdistrict, would authorize the contract in the name of the subdistrict.

CONCLUSION

It is the opinion of this office that a county court may create a sewer subdistrict pursuant to Sections 204.331 and 204.332, RSMo Supp. 1973, and such subdistrict shall have, in addition to those powers specified in Section 204.331, the powers given to sewer districts under Sections 249.430 to 249.660, RSMo 1969. However, in the creation of such a sewer subdistrict under Section 204.331, et seq., the county court must comply with the provisions of Sections 249.470 and 249.480, RSMo 1969. If such a sewer subdistrict is created, the county court, as governing body of the sewer subdistrict, may enter into a contract with a common sewer district created pursuant to Section 204.250, RSMo Supp. 1973, and Sections 204.260 to 204.470, RSMo 1969, whereby the common sewer district would provide any engineering, construction, maintenance, repair and administrative services required for the collection and treatment of sewage generated within the subdistrict.

The foregoing opinion, which I do hereby approve, was prepared by my assistant, Dan Summers.

Very truly yours,



JOHN C. DANFORTH
Attorney General