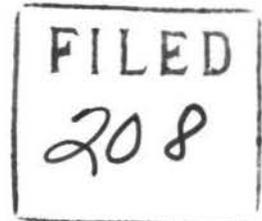


SEWERS: (1) A county court which creates a sewer
COUNTY COURT: district pursuant to Sections 249.430 to
SEWER DISTRICTS: 249.667, RSMo 1969, may contract with a
private party to perform all operation,
repair, and maintenance functions associated with the district's
sewer system; (2) the existence of such a contract does not alter
or delegate the legal responsibilities of the county court for the
operation and maintenance of the sewer system under Sections 204.
006 to 204.141, RSMo Supp. 1973; (3) the county court must bill for
sewer service charges and collect such charges itself, under the
procedure set out in Section 249.640; and (4) the special tax as-
sessments issued pursuant to Sections 249.640 and 249.645 may not
be assigned to a private entity for collection.

OPINION NO. 208

October 22, 1975

Mr. James L. Wilson, Director
Department of Natural Resources
Jefferson State Office Building
Jefferson City, Missouri 65101



Dear Mr. Wilson:

This official opinion is issued in response to your request
for a ruling on the following questions:

- "1. When a county court creates a sewer district pursuant to Sections 249.430 to 249.667, RSMo 1969, may the county court contract with a non-governmental person, firm or corporation, whereby the private person or entity would perform all operation, maintenance and repair functions associated with the sewer system?
- "2. If the county court can enter into such a contract, is the county court still legally responsible under Sections 204.006 to 204.141, RSMo Supp. 1973, for the operation and maintenance of the sewer system and treatment facilities?
- "3. In the situation described in question No. 1, may the county court allow the private person or entity to directly bill sewer district

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customers for monthly or yearly service charges, and keep all proceeds therefrom, or must the county court collect such service charges?

- "4. If special tax bills are issued pursuant to Sections 249.640 and 249.645, RSMo 1969, does the county court or county collector have the responsibility to collect delinquent special tax bills, or may the special tax bills be assigned to the private entity mentioned in question No. 1, for collection by said entity?"

We answer your questions as follows, in the order in which you have asked them:

1. In our Opinion No. 33, issued to the Honorable Floyd R. Gibson on May 29, 1958 (a copy of which is attached hereto), it was pointed out that Section 70.220, RSMo 1969, permits a "political subdivision"--a term which is defined in Section 70.210, RSMo 1969, to include sewer districts--to contract with any private person, firm, association, or corporation:

". . . for the planning, development, construction, acquisition or operation of any public improvement or facility, . . . provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision. . . ."

The essential question posed by your first inquiry, then, is whether a county court which has created a sewer district pursuant to Sections 249.430 to 249.667, RSMo 1969, is empowered to perform all the operation, maintenance, and repair functions associated with the sewer system which serves that sewer district. If the county court has the power to perform those functions itself on behalf of the sewer district, it may contract with a private person or entity for the performance of those functions pursuant to Section 70.220.

County courts are authorized pursuant to Section 249.460, RSMo 1969, to designate a sewer engineer for the purpose of superintending the construction and maintenance of sewers. Section 249.550 authorizes such a sewer engineer:

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". . . to employ such help and assistance as may be necessary for the carrying on of the maintenance, repair and administrative expenses of any sewer district or districts, as provided in sections 249.430 to 249.660, subject to the approval of the county court."

Section 249.640, RSMo 1969, provides in pertinent part as follows:

"Upon the recommendation of the sewer engineer, the county court, by resolution, shall have authority to levy a special assessment upon all lots, tracts or parcels of land, including improvements, in any sewer district established as provided in sections 249.430 to 249.660 for the maintenance, repair and administrative expense of the sewer in such sewer district or districts, . . ."

Section 249.645, RSMo 1969, also authorizes the establishment and collection of charges for sewage service, in addition to the charges which may be levied and collected for maintenance, repair, and administration expenses as provided for in Section 249.640. This provision and Section 249.640 necessarily imply, of course, that the county court may not only initially construct the sewer system, but may provide sewer services on a continuing basis.

Taking all the foregoing provisions of law into consideration, we conclude that county courts are empowered by law to perform all operation, maintenance, and repair functions associated with the sewer system of a public sewer district created pursuant to Sections 249.430 to 249.667, RSMo 1969. Therefore, they may contract with private persons or entities for the performance of those functions.

2. While Section 70.220 permits a political subdivision to contract for the operation of a public facility, neither it nor any other statute authorizes the political subdivision to delegate its own responsibilities with respect to such a facility by entering into such a contract. It is clear that the private person or entity contracting with a county court for the operation of a sewer district's sewage collection and treatment facilities is merely an agent of the county court and, absent specific statutory authorization, cannot be said to have assumed the responsibilities conferred upon the county court by Sections 249.430 to 249.667. The contractor assumes obligations only to its principal, by virtue of the specific provisions of its contract with the political subdivision (here, its contract with the county court which acts on behalf of the sewer district).

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That a political subdivision is ultimately responsible for the operation of a sewer system constructed under its authority--even though the actual construction of the sewer system was undertaken by a contractor--is clear from the case of Windle v. City of Springfield, 8 S.W.2d 61 (Mo. 1928). The court there held that pollution caused by such a sewer system was the responsibility of the city under whose authority the system was constructed, and that the persons damaged by such pollution did not have to look to the contractor for their remedy.

These principles are clearly applicable by analogy to the requirements imposed upon sewer districts by the Missouri Clean Water Law, Sections 204.006 to 204.141, RSMo Supp. 1973. Insofar as the operation of a district's sewer system may be affected by this law, the principal party responsible for the establishment and operation of the sewer system--that is to say, the county court--will be held responsible under the law, notwithstanding its contractual delegation of the actual operation and maintenance of the sewer system to a private person or entity as its agent.

3. Sewage service charges under Sections 249.430 to 249.667 are governed by Section 249.645, which provides as follows:

"Any public sewer district created under the provisions of section 249.640, may establish, make and collect charges for sewage services. The charges may be based upon the amount of water supplied to the premises and shall be in addition to those charges which may be levied and collected for maintenance, repair and administration expenses as provided for in said section. Any private water company, public water supply district, or municipality supplying water to the premises located within a sewer district shall, upon reasonable request, make available to such sewer district its records and books so that such sewer district may obtain therefrom such data as may be necessary to calculate the charges for sewer service. Prior to establishing any such sewer charges, public hearings shall be held thereon and at least thirty days' notice shall be given thereof."

This provision of the law was enacted in 1969. It makes reference to Section 249.640, an earlier-enacted statute, which provides as follows:

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"Upon the recommendation of the sewer engineer, the county court, by resolution, shall have authority to levy a special assessment upon all lots, tracts or parcels of land, including improvements, in any sewer district established as provided in sections 249.430 to 249.660 for the maintenance, repair and administrative expense of the sewer in such sewer district or districts, the said assessment to be levied according to the lots, tracts or parcels of real estate including improvements, as shown upon the assessment books prepared by the assessor of such county, such assessment not to exceed one-half of one percent of such assessed valuation. The county clerk shall compute the amount of such assessment against each lot, tract or parcel of real estate in such sewer district or districts and deliver a certified copy of such assessment to the county collector. The county collector shall report such assessment to anyone making inquiry about the taxes and shall receive payment therefor, and issue a duplicate receipt therefor, one of which shall be filed with the county clerk, and such payments shall be remitted to the county treasurer who shall be required to keep a separate account thereof which shall be subject to warrants drawn on said account by the county court, to be used only in the furtherance of the provisions of sections 249.430 to 249.660."

[We should note that Section 249.645 is somewhat misleading when it refers to "any public sewer district created under the provisions of section 249.640." Section 249.640 does not actually create any sewer districts; but, inasmuch as Section 249.640 does refer to "any sewer district established as provided in sections 249.430 to 249.660," we must assume that Section 249.645 actually refers to these latter sewer districts. Undoubtedly, the legislature, in enacting Section 249.645, actually meant to apply it to "any public sewer district subject to the provisions of section 249.640," and merely used the words "created under the provisions of section 249.640" inadvertently. To conclude otherwise would give the legislature's reference to Section 249.640 in Section 249.645 a meaningless or absurd construction, which is not favored in the law. State ex rel. Dravo Corporation v. Spradling, 515 S.W. 2d 512, 517 (Mo. 1974).]

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While the language of Section 249.645 is perhaps not quite as clear as it might be, we view it as requiring the responsible political subdivision--that is to say, the sewer district, acting through the county court--to bill and collect service charges in the same manner in which it makes assessments for maintenance, repair, and administrative expenses of the sewer district under Section 249.640. We view the enactment of Section 249.645 as an attempt to fill a previously existing loophole in Section 249.640--the absence of a provision allowing assessments for routine sewer use charges, as distinguished from the specific maintenance, repair, and administrative expenses of the district--and not as the establishment of an entirely new procedure for the establishment, billing, and collection of sewer use charges.

Section 249.640 quite clearly requires that the county court, by resolution, levy special assessments for maintenance, repair, and administrative expenses of sewer districts. The statute sets out various specific duties of the sewer engineer, county court, county clerk, county collector, and county treasurer in the setting and collection of these assessments. It does not appear, however, that Section 70.220 confers upon the sewer district any right to contract with a private person or entity for the performance of any of these duties of assessment and collection, since Section 70.220 permits contracts with private parties only for the "planning, development, construction, acquisition, or operation" of public facilities, but not for the financial administration of such facilities. Moreover, where a statute directs the performance of certain things by specified means and specified persons, it implies that such things shall not be done otherwise nor by different persons. Parvey v. Humane Society of Missouri, 343 S.W.2d 678, 681 (St.L.Ct.App. 1961).

Therefore, we conclude that, even when a county court contracts with a nongovernmental person, firm, or corporation for the operation, maintenance, or repair of the sewer system of a sewer district, the county court must itself bill and collect the service charges for such operation of the sewer system.

4. As we indicated in the answer to the previous question, Section 249.640 mandates the performance of certain duties by county officials in the process of billing and collecting the special taxes which Section 249.640 authorizes. For this reason, we do not believe that such special tax assessments may be assigned to a private entity for collection by such entity. Moreover, we would point out that Section 249.520, subsection 4, specifically provides that certified tax bills for the construction of district

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sewers shall be assignable. But no such provision appears in Section 249.640 with respect to the special assessments therein authorized for maintenance, repair, and administrative expenses, nor is there any such provision authorizing assignment of special assessments for the sewage service charges authorized by Section 249.645.

Section 249.650, which pertains to suits for the collection of tax bills, does not in itself authorize the assignment of such bills. It provides as follows:

"Suits to collect any tax bills herein authorized may be brought in any court of competent jurisdiction by the person to whom issued or any assignee in their own names. Every such certified tax bill shall, in an action brought to recover the amount thereof, be prima facie evidence of the validity of the charges against the property therein described; and where suit is brought before the liens have expired, said liens shall continue until the termination of such suits and the satisfaction of the judgments."

The language "any tax bills herein authorized" in this statute appears to apply only to tax bills issued pursuant to Section 249.520, subsection 2. Similar language ("all special tax bills provided for by sections 249.430 to 249.660") used in Section 249.580 clearly refers only to such tax bills which are issued directly to contractors. (Section 249.580 sets out a specific procedure for the preparation of such bills.) Section 249.640 uses the term "special assessment," not "tax bill," to refer to taxes for maintenance, repair, and administrative expenses of sewer districts. Section 249.600, RSMo, distinguishes between "special tax bills" and "special assessments." Thus, when Section 249.650 speaks of "any assignee," it refers only to assignees of the special tax bills issued under Section 249.520 and does not purport to empower a county court to assign special assessments created under Sections 249.640 and 249.645.

We must, therefore, conclude that the assignment of special tax assessments issued pursuant to Sections 249.640 and 249.645 to a private entity is not authorized by law.

CONCLUSION

Therefore, it is the opinion of this office that: (1) a county court which creates a sewer district pursuant to Sections 249.430 to 249.667, RSMo 1969, may contract with a private party to

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perform all operation, repair, maintenance functions associated with the district's sewer system; (2) the existence of such a contract does not alter or delegate the legal responsibilities of the county court for the operation and maintenance of the sewer system under Sections 204.006 to 204.141, RSMo Supp. 1973; (3) the county court must bill for sewer service charges and collect such charges itself, under the procedure set out in Sections 249.640; and (4) the special tax assessments issued pursuant to Sections 249.640 and 249.645 may not be assigned to a private entity for collection.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Mark D. Mittleman.

Yours very truly,



JOHN C. DANFORTH
Attorney General

Enclosure: Op. No. 33
Gibson, 5-29-58