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ATTORNEY GENERAL

OFFICES OF THE  
**ATTORNEY GENERAL OF MISSOURI**  
JEFFERSON CITY

January 23, 1976

OPINION LETTER NO. 16

Honorable Wesley A. Miller  
Representative, District 121  
c/o House Post Office, Capitol Building  
Jefferson City, Missouri 65101

Dear Representative Miller:

This is in response to your request for an opinion from this office as follows:

"Does Section 88.814 R.S.Mo. 1969 as amended by House Bill No. 220, passed and approved July 18, 1975, permit a municipality to pay a portion of the cost of a district sewer when Section 88.842 R.S.Mo. 1969 strictly prohibits such a payment; and if so, does House Bill No. 220 apply retroactive so as to permit a municipality to reimburse individuals for a portion of a special tax bill issued in 1971 as payment for the construction of a district sewer where said individuals have paid the special tax bills in full."

Washington is a third class city.

You first inquire whether House Bill No. 220, passed and approved July 18, 1975, by the 78th General Assembly, permits a municipality to pay a portion of the cost of a district sewer when Section 88.842, RSMo 1969, strictly prohibits such payment.

Section 88.814 of House Bill No. 220, provides in part:

"In all cases where work is done or improvements made and the cost thereof is assessed as a special tax, any owner of property upon

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which such tax is levied may request, and the legislative body of such city, town, or village shall grant, a public hearing to determine whether such assessment is excessive or is levied at a greater sum than was stated in the notices required by section 88.812, RSMo. The legislative body is hereby empowered to adjust or reduce such assessment which is determined to be excessive or levied at a greater sum than was stated in the notices. If such adjustments or reductions result in the collection of special taxes insufficient to pay the costs of work done or improvements made, the city, town, or village, may pay the difference between costs accrued and special taxes collected out of general revenue."

This bill applies in all third and fourth class cities, special charter cities and towns and villages.

Section 88.832, RSMo 1969, provides that any municipality of certain classification 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 sewer. It further provides for the establishment of public sewers as provided therein.

Section 88.834, RSMo 1969, provides for district sewers to be established; and Section 88.836, RSMo 1969, provides for the apportionment of the cost of the district sewer and levy of tax.

Section 88.838, RSMo 1969, provides for the establishment of joint sewer districts and for the costs of construction.

Section 88.842, to which you refer, provides in part as follows:

"1. Private sewers connected with the public, district or joint district sewers may be constructed under such restrictions and regulations as the governing body of the municipality may prescribe by general ordinance; but the municipality shall be at no expense in the construction, repairing or cleaning of the same, or for any damage that may arise from their construction.

"2. The municipality shall incur no liability for building district or joint district

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sewers other than in the manner provided in section 88.838, except when the city, town or village is the owner of a lot of ground within the district or joint sewer district, and in such case the said municipality shall be liable for the cost of said sewer in the same manner as other property owners within the district. The repair, cleaning and other incidental expenses of district and joint district sewers shall be paid out of the general appropriation for that purpose." (Emphasis supplied)

The question is whether House Bill No. 220 permits a municipality to pay a portion of the cost for building a district sewer in view of the provisions of Section 88.842.

It is our view that Section 88.842 is a special statute limited to sewers as provided therein and that House Bill No. 220 is a general statute which has to do with public improvements in general including construction of sidewalks, sewers, paving, curbing, and guttering of any street and any other improvements as authorized by statute. House Bill No. 220 expressly repeals Sections 88.812 and 88.814, RSMo 1969. Section 88.812 prior to its repeal included in general the same language regarding constructing and repairing sidewalks, curbing, sewer, and other public improvements. Section 88.842 was enacted at the same time that Section 88.812 was originally enacted and such sections are considered of equal importance. House Bill No. 220 does not expressly repeal Section 88.842, and the question is whether it is in conflict with or impliedly repeals the provision of Section 88.842. It is our view that it does not and that provisions of Section 88.842 govern.

As heretofore stated, House Bill No. 220 is a statute that includes the establishing and maintenance of public works in general by a municipality. Section 88.842 is a special statute applying only to establishing certain sewers in a municipality. Where special and general statutes treat of same subject matter but are not irreconcilably inconsistent, a general statute, though later in date, will not be held to have repealed a special statute, and a special statute will prevail in its application to subject matter as far as it comes within special provisions. Gross v. Merchants-Produce Bank, 390 S.W.2d 591 (K.C.Mo.App. 1965).

Since Section 88.814 of House Bill No. 220 is a general statute and Section 88.842 is a special statute applying only to certain types of sewers, it is our opinion that Section 88.842 is still in effect and must be followed in establishing sewers as provided therein.

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In view of this interpretation of House Bill No. 220, the latter questions you submit are moot.

Yours very truly,

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

JOHN C. DANFORTH  
Attorney General