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September 29, 1986

OPINION LETTER NO. 118-86

The Honorable John Scott
Senator, District 3
State Capitol Building, Room 416
Jefferson City, Missouri 65101



Dear Senator Scott:

This opinion is in response to your question asking:

Does Attorney General's Opinion No. 98-1957 apply to the Metropolitan St. Louis Sewer District and particularly does Section 107.170, RSMo 1978, apply to the Metropolitan St. Louis Sewer District?

I understand you are concerned that Section 107.170, RSMo 1978, and the interpretation of that section in Missouri Attorney General Opinion No. 98, Witte, November 8, 1957, may apply to contracts for public works of the Metropolitan St. Louis Sewer District.

Section 107.170, RSMo 1978, provides:

107.170. -- Bond -- public works contractor. -- 1. It is hereby made the duty of all officials, boards, commissions, commissioners, or agents of the state, or of any county, city, town, township, school, or road district in this state, in making contracts for public works of any kind to be performed for the state, or for such county, city, town, township, school or road district, to require every contractor for such work to furnish to the state, or to such county, city, town, township, school or

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road district, as the case may be, a bond with good and sufficient sureties, in an amount fixed by said officials, boards, commissions, commissioners, or agents of the state, or of such county, city, town, township, school or road district, and such bond, among other conditions, shall be conditioned for the payment of any and all materials, lubricants, oil, gasoline, grain, hay, feed, coal and coke, repairs on machinery, groceries and foodstuffs, equipment and tools, consumed or used in connection with the construction of such work, and all insurance premiums, both for compensation, and for all other kinds of insurance, on said work, and for all labor performed in such work whether by subcontractor or otherwise.

2. All bonds executed and furnished under the provisions of this section shall be deemed to contain the requirements and conditions as herein set out, regardless of whether the same be set forth in said bond, or of any terms or provisions of said bond to the contrary notwithstanding.

A copy of Opinion No. 98, Witte, November 8, 1957, (hereinafter "the opinion") is enclosed.

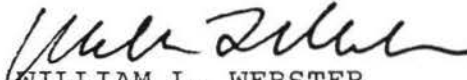
Section 107.170 applies to "contracts for public works of any kind to be performed for the state, or for such county, city, town, township, school or road district. ...". The Metropolitan St. Louis Sewer District was established under the provisions of Article VI, Section 30 of the Missouri Constitution. It is not the state or a county, city, town, township, school or road district. A primary rule of statutory construction, *expressio unius est exclusio alterius*, is that the enumeration of particular things excludes those not included. Therefore, the Metropolitan St. Louis Sewer District is not subject to Section 107.170.

It follows that the conclusion in the opinion, to the extent it is based upon Section 107.170, is not applicable to contracts for public works entered into by the Metropolitan St. Louis Sewer District. This does not mean, however, that the

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Metropolitan St. Louis Sewer District should not require performance bonds. The mechanism to require such assurance is left to the Metropolitan St. Louis Sewer District.

Very truly yours,



WILLIAM L. WEBSTER
Attorney General

Enclosure:

Opinion No. 98, Witte, November 8, 1957