SEWER DISTRICTS: It is illegal for city, town, village or sewer district to place a rental charge on its sewer system for maintenance thereof or for building up construction reserve, unless revenue bonds are first voted and issued.

April 22, 1953

FILED
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James R. Amos, M.D.
Director, Division of Health
Jefferson City, Missouri

Dear Sir:

This will acknowledge the receipt of your opinion request of July 29, 1952, which request reads as follows:

> "Is it legal for a city, town, village, or sewer district to place a rental charge upon the use of a sewer system owned by the said city, town, village or sewer district, for the purpose of maintaining the same, or for the purpose of building up a construction reserve, without first voting and issuing revenue bonds."

For the purposes of this opinion we will assume that where you ask if it is legal to place a "rental" charge upon the use of a sewer system, that you mean whether the owner thereof has a right to charge a rate for its use.

Your request calls for an interpretation of House Bill No. 45, passed by the 66th General Assembly of Missouri, and which is now a part of the Revised Statutes of Missouri, 1949, beginning at Section 250.010 thereof and ending at Section 250.250.

Section 250.040, Cumulative Supplement 1951 of the Missouri 1949 Revised Statutes, provides the manner in which a city, town or village may pay for the cost of acquiring, constructing, improving or extending a sewage system or a combined waterworks and sewerage system. Subsection 5 thereof provides as follows:

> "(5) From the proceeds of revenue bonds of such city, town or village, payable solely from the revenues to be derived from the operation of such sewerage system or combined waterworks and sewerage system or from any combination of any or all such methods of providing funds."

The following section of the statutes, 250.250, RSMo. 1949, Cumulative Supplement 1951, in referring to the cost of such improvement to a sewer district provides that the cost can be met in four (4) different ways, the last of which is as follows:

> "(4) From the proceeds of revenue bonds of such sewer district, payable solely from the revenues to be derived from the operation of such sewerage system or from any combination or all such methods of providing funds."

From the foregoing provisions of the statutes, it is apparent that when the election to issue revenue bonds as required by Section 250.070, RSMo. 1949, has been held and a favorable vote cast, and when an ordinance adopted by the governing body of the city, town or village or a resolution adopted by the board of trustees of a sewer district as provided for in Section 250.080, RSMo. 1949, authorizes the issuance thereof, a city, town, village or sewer district has the authority to issue revenue bonds for the purpose of acquiring, constructing, improving or extending of a sewerage and/or water system. Section 250.120, RSMo. 1949, Cumulative Supplement 1951, makes it the duty of any city, town, village or sewer district which issues bonds for the purpose aforesaid, to fix and maintain rates and make and collect charges for the use and service of the system, sufficient to pay the costs, maintenance and operation thereof. So, a city, town, village or sewer district is authorized to charge a rate for the use or "rental" of its sewer system where revenue bonds are issued. Now, the question is, do they have a right to do so if the revenue bonds are not voted and issued?

The Legislature specified in the instant group of statutes that the cost of acquiring, constructing, improving or extending a sewer system could be paid in four ways, one of which was by the issuance of revenue bonds. It further provided that if and when such revenue bonds were properly issued it became the mandatory duty of the city, town, village or sewer district to obtain funds for the cost of maintenance and operation thereof and the retirement of said revenue bonds, and to fix and charge rates for the use or "rental" of said sewers could be set up and that was after revenue bonds had been issued. We have the express mention of one

manner in which to proceed which implies the exclusion of any other. This is embodied in the maxim, "Expressio Unius est exclusio alterius."

In the case of Keane vs. Strodtman, 18 S.W. (2d) 896, l.c. 898, this court said:

> "The familiar maxim of "expressio unius est exclusio alterius" may also be invoked, for the maxim is never more applicable than in the construction of statutes. Whitehead vs. Cape Henry Syndicate, 105 Va. 463, 54 S.E. 306; Hackett vs. Amsden, 56 Vt. 201, 206; Matter of Attorney General, 2 N.M. 49. Certainly where, as at bar, the statute (Section 8702) limits the doing of a particular thing to a prescribed manner, it necessarily includes in the power granted the negative that it cannot be otherwise done. This is the general rule as to the application of the maxim."

In the case of Kansas City Court of Appeals in Dougherty vs. Excelsior Springs, 110 Mo.App. 623, 626, 85 S.W. 112, 113, the following statement was made by the Court:

> "The law is well settled that when special powers are conferred, or where a special method is prescribed for the exercise and execution of a power, this brings the exercise of such power within the proivisions of the maxim expressio unius, etc., and by necessary implication forbids and renders nugatory the doing of the thing specified except in the particular way pointed out."

In Peatman vs. Worthington Drainage District, 176 S.W.(2d) 539, l.c. 545, in speaking of the foregoin citation, the Kansas City Court of Appeals said:

> "The foregoing expressions are clearly applicable to the exercise of powers granted to a drainage district, which under the laws of Missouri is a public governmental corporation."

Another expression on this question was made by the St. Louis Court of Appeals in City of Hannibal vs. Minor, 224 S.W.(2d) 598, l.c. 605:

> "A careful reading of the statute itself, Section 7451, supra, shows that the Legislature gave to the municipalities named therein authority to tax a large number of occupations and callings and 'specially' named them separately. Among those named was 'auto wrecking shops.' When we consider that the Legislature specially named 'machine shops' and 'auto wrecking shops' but did not mention 'automobile repair shops,' the intention to exclude the last mentioned becomes clear. There is a fundamental principle of construction which has been recognized and applied from time immemorial by our courts to such questions as we have here. It is embodied in the maxim; 'Expressio Unius est exclusio alterius' which means that the express mention of one thing, person or place implies the exclusion of the other. The application of this principle to the question before us merely serves to emphasize the fact that the City in this case was without authority to include in its ordinance 'automobile repair shops.'"

Applying the above principle to our present question, we must come to the conclusion that the city, town, village, or sewer district can only fix and charge a rate, or "rental," on its sewer system as provided in Chapter 250, RSMo. 1949, after revenue bonds have been legally authorized and issued.

CONCLUSION

It is, therefore, the opinion of this department that it is not legal for a city, town, village or sewer district to place a rental charge upon the use of its sewer system for the purpose of maintaining same or building up a construction reserve, unless revenue bonds are first legally authorized as provided in Chapter 250, RSMo. 1949.

This opinion which I hereby approve was written by my assistant, Mr. John S. Phillips.

Very truly yours,

JOHN M. DALTON
Attorney General