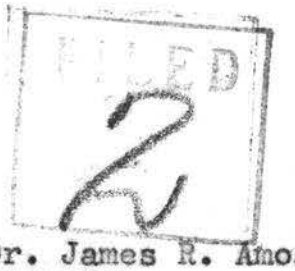
SANITARY DRAINAGE DISTRICT:
REVENUE BONDS:
SEWAGE DISPOSAL:

Chapter 248, RSMo 1949, authorizes the creation by the City of Kansas City, and parts of Clay, Platte and Jackson Counties, of a sanitary drainage district to carry domestic sewage only; this district is a political subdivision which may become indebted in an amount allowed by Section 26(b), Missouri Constitution, 1945.



February 15, 1956

Dr. James R. Amos
Director
Division of Health
Jefferson City, Missouri

Dear Dr. Amos:

This will refer to your request for an opinion of this office, which request is as follows:

> "Recently there has been activity toward the development of a metropolitan sewer district in the Kansas City area. Interest in such a metropolitan approach to the sewerage problem has been expressed by officials in Clay, Platte and Jackson Counties. The Division of Health has encouraged such an approach. Interest has also been expressed in the Kansas counties of Johnson and Wyandotte. It is realized that enabling legislation must be enacted to incorporate a district crossing the state lines. However, it would be desirable to organize a district, taking care of the metropolitan area on the Missouri side to eliminate and prevent creation of unsatisfactory conditions which will affect public health. We therefore request that you render opinions on the following questions in order that the Division of Health may make recommendations for the creation of such a district to the interested local parties.
>
> "1. Is it possible to form a sanitary drainage district for the purpose of transporting domestic sewage only and incorporating the City of Kansas City and portions of Jackson, Clay and Platte Counties under the provisions of Chapter 248, Revised Statutes of Missouri?

"2. If it is possible to create a sanitary drainage district under the provisions of Chapter 248, Revised Statutes of Missouri, and incorporating the area as described, could this sanitary drainage district finance the construction of sanitary sewers through the issuance of revenue or general obligation bonds? "

We believe Sections 248.010 and 248.020, RSMo 1949, should first be noted. They read as follow:

"Section 248.010. Whenever the construction and maintenance of a common outlet or channel or of a system of drains or sewers for the drainage of any area in the state of Missouri shall become necessary to secure proper sanitary conditions for the preservation of the public health, if such area shall lie in part within and in part without the corporate limits of any city having a population of three hundred thousand or more, said area may be established and incorporated as a sanitary district under this chapter in the manner following, to wit: * * *

"Section 248.020. 2. Said commissioners may alter or amend the boundaries of the proposed district, as set forth in the petition or petitions, so that it may embrace all of the area capable of being efficiently drained by the common outlet or channel, or by the system of sewers or drains, or so as to exclude from the sanitary district any part of the natural drainage area which is so situated as not to be benefited by the proposed sanitary drainage, and for this purpose they shall have power to have made all surveys and maps necessary to locate and describe the said boundaries."

These sections provide for the establishment of a sanitary district encompassing a natural drainage area. The area in question, that is, Kansas City and parts of Jackson, Clay and Platte Counties, meets this statutory requirement.

From your question, it is clear that you want this district to transport domestic sewage only. Domestic sewage is "sewage derived principally from dwellings, business buildings, institutions, and the like." (It may or may not contain ground water, surface water, or storm water.) The issue becomes, thus, whether Section 248.010, RSMo 1949, authorizes creation of a sanitary district for the purpose of carrying domestic sewage rather than ground and surface water, that is, water which, if carried by artificial means at all, is transported by drains, not sewers.

We believe that the language of Section 248.010, RSMo 1949, authorizes sanitary districts to build sewers or drains or to construct both. Moreover, it is our view that the legislature, when it provided for the creation of sanitary districts "necessary to secure proper sanitary conditions for the preservation of the public health," intended primarily to encourage the elimination of health hazards by proper sewage control, and that under Chapter 248, RSMo 1949, sanitary drainage districts may be created by the city of Kansas City and part of Clay, Platte and Jackson counties for the transportation of domestic sewage only.

Section 248.130 does undertake to provide the authorization by an order of the circuit court having jurisdiction for the issuance of sanitary district bonds if, in the judgment of the board of trustees, the means provided in Section 248.120 are insufficient to provide for the construction of the whole or any part of a general plan adopted as an urgent sanitary measure in the anticipation of revenue of the sanitary district for the ten years next ensuing computed on the basis of an annual levy of one-half of one per cent upon the valuation for the year in which the authority for issue is given. Section 248.130, under both Sections 26(b) of Article VI of the present constitution and Section 12 of Article X of the Constitution of 1875, which, respectively, provide now and then did provide for the creation of an indebtedness in excess of the anticipated revenue of the district only as was provided in the former constitution and is now provided in Section 26(b) of the present constitution, should be held to be unconstitutional as authorizing the creation of indebtedness in a way not authorized by the constitution of Missouri of 1875 or the present constitution of the state, and

upon such grounds said Section 248.130 is here held to be in conflict with such terms of the former and the present constitutions of Missouri and is, therefore, void.

We believe it is clear that under the terms of Section 26(b), Article VI, of the 1945 constitution, an election may be held by any political corporation or subdivision of the state for the creation of a debt authorized by the constitution and issue bonds in discharge thereof. Under the provisions of Section 248.050, RSMo 1949, a sanitary district is created in law and in equity as a body corporate and politic to be known in the name and style of "the sanitary district of _____."

Section 26(b) of Article VI, of the Constitution of Missouri, 1945, reads as follows:

> "Any county, city, incorporated town or village, school district or other political corporation or subdivision of the state, by vote of two-thirds of the qualified electors thereof voting thereon, may become indebted in an amount not to exceed five per centum of the value of taxable tangible property therein as shown by the last completed assessment for state and county purposes."

It is apparent, also, that Section 248.050 brings a sanitary district as a body corporate and politic expressly within the terms of said Section 26(b) of Article VI of the Constitution, with respect to the issuance of sanitary district bonds.

Said Section 26(b), supra, is now what formerly constituted Section 12 of Article X of the Missouri Constitution of 1875. That section of the former constitution was held by the Supreme Court of Missouri to be self enforcing, and required no legislation to give it full and complete operating effect to authorize an election for the creation of indebtedness and the payment thereof by bonds by counties for public purposes in excess of the yearly income of the county, with the assent of two-thirds of the voters thereof voting at an election held for that purpose. This was the express ruling and decision of the Supreme Court of Missouri in State ex rel. Clark County v. Hackmann, State Auditor, 218 S. W. 318. The court there, at l. c. 324, holding that Section 12 of Article X of the Constitution of Missouri, 1875, was self enforcing, said:

"* * * Whilst section 12 of article 10 is a clear limitation on the power to create debts, and the power to increase taxes, it is likewise a grant of power to do both in a certain way and within a prescribed limit. There is no question of the limit in this case, because the debt is within the limit. The certain way is fixed, and that is by a vote of the people. The grant or right to determine the question by a vote of the people is fixed by this constitutional provision. Even the limitations in this section of the Constitution are of two classes. First we have those that must fall within the limitation of 'five per centum on the value of the taxable property therein'; and, secondly, we have those where the limit is higher, as stated in the first proviso. This proviso refers to certain specific matters, i.e., courthouse, jail, and rock roads. These two classes should not be overlooked. The first embraces all usual county purposes; the other is specific county purposes. The payment of legal debts falls within the first, and whilst both require the vote of the people, the latter, being a call for much heavier taxation, has been looked after by special legislation as to the elections for such purposes. But this does not mean that as to the first class named the Constitution itself is not sufficient authority for the election. In State ex rel. v. M.K. & T. Ry. Co., 164 Mo. loc. cit. 213, 64 S.W. 188, it is said:

" 'The power being conferred to hold an election, and no means provided therefor, carries with it, as an inevitable and indubitable incident, the usual and customary means to put into effect the power thus conferred.'

"Whilst section 12, art. 10, inhibits

> counties from contracting debts 'exceeding in any year the income and revenue provided for such year,' yet in addition to this inhibition is a grant of authority to contract in excess of the yearly income and revenue, with 'the assent of two-thirds of the voters thereof voting at an election to be held for that purpose.' If this is not a grant of the authority, there is no such authority. Without this grant the Legislature would be powerless, and no law passed by the Legislature could give it. This because of the broad and positive restriction in the first paragraph, so that, for the ordinary and usual county public purposes, the real grant to hold an election comes from the Constitution. And where no machinery has been provided for such an election, it is sufficient if there is used the ordinary and usual machinery provided for obtaining the expression of the votes upon the question. In this case the Legislature in 1919 has specifically provided the method, which is not materially different from the one used here, but if our views of the situation are correct, there would be a useless expenditure of money to require a new vote under the act of 1919. We think there was authority for the election without this act, and that the act was passed to make assurance doubly sure."

The supreme court has upheld and approved its decision in the Hackmann case, supra, on the same question, in State ex rel. Gilpin et al. v. Smith, State Auditor, 96 S. W. (2d) 40, and in State ex rel. City of Fulton v. Smith, State Auditor, 194 S. W. (2d) 302.

In the Gilpin case the court, at l.c. 41, reaffirmed its holding in the Hackmann case, and said:

> "In the case of State ex rel. Clark

> County v. Hackmann, 280 Mo. 686, 218 S. W. 318, the county court of Clark county submitted to the voters the proposition of incurring an indebtedness in the sum of $103,944.04, and issuing bonds of the county therefor, to pay judgments against the county. The bonds were duly authorized at a special bond election by a vote of more than two-thirds of the electors voting on the proposition. We sustained the validity of the bonds on the grounds that section 12 of article 10 of our State Constitution in itself constitutes a grant of authority to contract indebtedness for a public purpose with the assent of two-thirds of the voters voting on the proposition, and within the debt limitation specified in section 12 of article 10 of the Constitution. We also held that the debt created by the bond issue was for a 'public purpose' within the meaning of section 3 of article 10 of our Constitution."

The court, in the City of Fulton case against Smith approved the Hackmann case and, at l.c. 304, 305, ruled:

> "State ex rel. Clark County v. Hackmann, 280 Mo. 686, 218 S. W. 318, is directly in point. There a constitutional provision was held to be self-executing which granted power to counties to create debts for county public purposes by elections (by a prescribed majority) held for the purpose, but no machinery was provided for such election. A special election was called upon a petition signed by more than 300 voters and taxpayers at which the proposition to issue the bonds was submitted, and approved by the requisite majority. After that election, and before the case was determined on appeal, the legislature passed an act specifically providing a

> method of holding such elections. And this court held it sufficient if there is used the ordinary and usual machinery provided for obtaining the expression of the voters upon the question. The following from State ex rel. Miller v. Missouri K. & T. Ry. Co., 164 Mo. 208, loc. cit. 213, 64 S. W. 187 loc. cit. 188, was cited approvingly: 'The power being conferred to hold an election, and no means provided therefor, carries with it as an inevitable and indubitable incident the usual and customary means to put into effect the power thus conferred.' The court further held that despite the later enacted specific act, there was authority for the election. The Clark County case was followed in the later case of State ex rel. Gilpin v. Smith, 339 Mo. 194, 96 S. W. 2d. 40."
> (See, also, State ex rel. Miller v. M.K.& T. Ry.Co., 164 Mo. 208, l.c. 212,213.)

The supreme court, in the Gilpin case, supra, and in the city of Fulton case, supra, held that the terms of Section 12 of Article X of the 1875 constitution were self enforcing. The same rule that it is self enforcing applies with equal force to Section 26(b) of Article VI of the present constitution of this state.

It is, considering the premises, the further opinion of this office that Section 26(b) is self enforcing, and that under its terms an election may be held by a sanitary drainage district without additional legislative authority to authorize the creation of an indebtedness by such district, and that bonds may be issued by such district therefor in an amount not to exceed five per cent of the value of the taxable tangible property therein as shown by the last completed assessment for state and county purposes.

CONCLUSION

It is, therefore, the opinion of this office that Chapter

Dr. James R. Amos

248, RSMo 1949, authorizes the creation by the city of Kansas City, and parts of Clay, Platte and Jackson counties, of a sanitary drainage district to carry domestic sewage only, and that such district is a political subdivision which may become indebted in an amount allowed by Section 26(b), Missouri Constitution, 1945.

The foregoing opinion, which I hereby approve, was prepared by my assistant, George W. Crowley.

Very truly yours

John M. Dalton
Attorney General

GWC:lc