ASSESSMENT OF PROPERTY OWNERS: In fourth-class cities the cost of engineering services in a sanitary sewer project may not be added to the assessment against property owners.

June 8, 1959

FILED 40

Honorable W. D. Hibler, Jr.
Representative, Chariton County
House of Representatives
Jefferson City, Missouri

Dear Sir:

On April 2, 1959, you asked this department for an official opinion as follows:

> "I have a request from my county engineer and the City of Brunswick to ask your office for a ruling.
>
> "What they want to know is on sanitary sewer districts where the payment for sewers is handled by a special tax bill on a square foot basis,- can costs of engineering the project be included in the tax bill assessment.
>
> "This would apply to cities of the third and fourth class."

Your question is: Whether to the actual cost of putting in sewers, which cost is upon an assessment basis against property benefited thereby, can be added the cost of the engineering services connected therewith.

We have ascertained that the City of Brunswick does not have a city engineer. Chariton County, in which the City of Brunswick is located, does have a County Surveyor and Highway Engineer, but it is not intended to employ him for the Brunswick job, for which it is the intention to employ an engineer who resides in Kahoka, Clark County, Missouri.

We have also ascertained that Brunswick is a city of the fourth class. We note that Section 88.717, V.A.M.S., gives the

board of aldermen of fourth class cities the power to cause a general sewer system to be established, which system shall be composed of three classes of sewers, to wit, public, district and private.

We also note numbered paragraph 2 of Section 88.720, V.A.M.S., which reads as follows:

> "2. As soon as any district sewer shall have been completed the city engineer or other officer having charge of the work shall compute the whole cost thereof and shall apportion the same against the lots, tracts or parcels of ground, exclusive of the improvements, in proportion to the area of the whole district exclusive of public highways, and such officer shall report the same to the board of aldermen by bill or otherwise and the board of aldermen shall thereupon levy and assess a special tax by ordinance against each lot, tract or parcel of ground within the district in the name of the owner or owners thereof. Whereupon the city clerk shall make out a certified tax bill under the seal of the city of such assessment against each lot, tract or parcel of ground within the district in the name of the owner or the owners thereof. Said certified special tax bill shall be signed by the mayor and attested and recorded by the city clerk and shall be delivered to the contractor for the work, who shall proceed to collect the same by the ordinary process of the law in the name of the city to his own use and in case of absent owners he may sue by attachment or by any other process known to the law."

We note in the above-numbered paragraph 2 that the city engineer or other officer having charge of the work shall compute "the whole cost thereof and shall apportion the same against the lots, tracts or parcels of ground, * * *."

The language particularly indicated in the section would appear to be quite broad and inclusive but it is in general terms and would, therefore, we believe, be subject to limitation by

specific holdings on a particular point regarding such costs. A number of the Missouri Appellate Court opinions have ruled upon the precise point in issue adversely to adding the costs of engineering to the tax bills. In the case of Walsh v. Bank, 139 Mo. App. 641, l.c. 648, the Springfield Court of Appeals stated:

> "The city had agreed to pay Burns & McDonnell for their services five per cent of the cost of construction, and this was added to the cost, and included in the taxbills. Some lots were omitted and no taxbills issued against them. These facts are now urged as reasons for annulling these taxbills. The commission of Burns & McDonnell should not have been included and the property-owners cannot be made to pay it. The plaintiff may also be relieved of the erroneous charge for lots omitted, but these things do not render the taxbills void [Neenan v. Smith, 60 Mo. 292; First National Bank of Kansas City v. Arnoldia, 63 Mo. 229; Neill v. Ridge, 119 S.W. 619; Johnson v. Duer, 115 Mo. 366.]."

It will be noted that a number of cases are cited by the courts in support of its position.

In the case of City of Jackson, Missouri v. Houck, 226 Mo. App. 835, at l.c. 844, the St. Louis Court of Appeals stated:

> "It appears from the record that the contract price for the improvement was $17,233.45 and it is admitted by the plaintiff that there was added to this $838.18 for engineering expenses, which was five per cent of the contract price which plaintiff has expressed a willingness to deduct if found to be improper. Since the property owners were not liable for any amount in excess of the contract price it was improper to add to the tax bill the cost of the engineer's services in supervising the work. [City of Boonville ex rel. v. Rogers, 125 Mo. App. 142, 101

S. W. 1120; Walsh v. Bank, 139 Mo. App. l.c. 648, 123 S.W. 1001; City of Washington v. Mueller (Mo. App.), 287 S.W. l.c. 861.] But under the cases cited the addition of this amount to the tax bill does not render the tax bill void but the same may be deducted from the amount thereof."

We believe that the above cases represent the law on this matter.

CONCLUSION

It is the opinion of this department that in fourth class cities the cost of engineering services in a sanitary sewer project may not be added to the assessment against property owners.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Hugh P. Williamson.

Very truly yours,

John M. Dalton
Attorney General

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