MUNICIPAL CORPORATIONS: NUISANCES: Construction of Section 7202, R. S. Mo. 1929 - Cities of the fourth class have right to abate nuisances and issue special tax bills against the property for the expenses incurred.

July 28, 1940

8-21

FILED
85

Honorable Roy W. Starling
Attorney at Law
Eldon, Missouri

Dear Sir:

We are in receipt of your request for an opinion, dated May 1, 1940, together with Ordinance No. 282, the former which reads as follows:

> "I am herewith enclosing a copy of Ordinance No. 282 of the City of Eldon, Missouri, a City of the Fourth Class.
>
> In the City we have a number of residences not within the sewer district and not provided with a private sewage treatment plant. On these properties ordinary, open, outside toilets are located. You will observe that, by Section III. of this ordinance, if after notice is given by the proper officer the owner or the occupant of the property does not provide one of the three approved methods of disposal of human excreta, the city is given the power to do or have done the things necessary to comply with the provisions of this ordinance and to issue a special tax bill in payment of the cost.
>
> The Mayor and Board of Aldermen would like an opinion from your department as to whether a buyer of property sold under one of the special tax bills so issued would take good title to the property.

I have had some doubt as to the authority of a city of the fourth class to issue special tax bills in payment of improvements of this type."

Section 7023, R. S. Mo. 1929, reads as follows:

"The board of aldermen may make regulations and pass ordinances for the prevention of the introduction of contagious diseases in the city, and for the abatement of the same, and may make quarantine laws and enforce the same within five miles of the city. They may purchase or condemn and hold for the city, within or without the city limits, within five miles therefrom, all necessary lands for hospital purposes, waterworks, sewer carriage and outfall, and erect, establish and regulate hospitals workhouses, poor-houses, and provide for the government and support of the same, and make regulations to secure the general health of the city, and to prevent and remove nuisances: Provided, however, that the condemnation of any property outside of the city limits shall be regulated in all respects as the condemnation of property for railroad purposes is regulated by law; and provided further, that the police jurisdiction of the city shall extend over such land and property to the same extent as over public cemeteries, as provided in this article."

Section 7207, R. S. Mo. 1929, reads as follows:

"The legislative or governing bodies of cities organized under the general

> statutes or special charters shall have, and they are hereby granted the power to suppress all nuisances which are, or may be, injurious to the health and welfare of the inhabitants of said cities, or prejudicial to the morals thereof, within the boundaries of said cities and within one-half mile of the boundaries thereof. Such nuisances may be suppressed by the ordinances of said cities or by such act or order as the charters of said cities authorize them to adopt. If the nuisance is suppressed within the city limits, the expense for abating the same may be assessed against the owner or occupant of the property, and against the property on which said nuisance is committed, and a special tax bill may be issued against said property for said expense."

Paragraph 588, 43 Corpus Juris, reads in part as follows:

> "Toilets, water-closets, privies, and cesspools may be the proper subject of municipal regulation. The power of a municipal corporation to do so is usually derived from its police power. The regulation must be reasonable. The power to regulate does not include the power to prohibit. * * * "

In State ex rel. Pickering v. City of Willow Springs, 230 S. W. 352, l. c. 353, the court had this to say:

> "As to whether the alleged nuisance is in fact a nuisance and subject to abatement is a question of judgment on the part of the legislative

> body of the city, and certainly we have no authority to direct the subject-matter of legislation on the part of the city council. It is their duty to relieve the inhabitants of the city of this nuisance; but such duty is not, in the state of this record, a ministerial duty, and therefore cannot be directed in mandamus."

In the case of St. Louis v. Nash, 260 S. W. 985, l. c. 986, we find the following:

> "(3) IV. It is a proper and constitutional exercise of the police power of the state for the protection of the public health to require privy vaults to be removed and replaced by water closets. * * * * * * * * * *
>
> (4) V. In the exercise of police power of the state, a municipality may lawfully require a property owner to alter or reconstruct an existing building without compensation, when such alteration or reconstruction is reasonably necessary to insure the public safety or to protect the public health. * * * * * "

In the case of City of St. Louis v. Hoevel Real Estate and Building Co., 59 S. W. (2d) 617, Judge Gantt had this to say in ruling and in passing upon the case of St. Louis v. Nash, supra:

> "In that case, as in this case, the defendant was charged with a violation of the section. In ruling the question we held that the enactment was a valid exercise of the police power, and that the section was not in conflict with the

> State and Federal Constitutions. Furthermore, we held that 'in the exercise of police power of the state, a municipality may lawfully require a property owner to alter or reconstruct an existing building without compensation, when such alteration or reconstruction is reasonably necessary to insure the public safety or to protect the public health.' We adhere to our ruling in that case."

In the case of Ratchford v. City of Gastonia, 177 N. C. 376, l. c. 379, which we copy to show the similarity to the instant case, the court had this to say:

> "The public health is a matter of importance to the entire neighborhood, and especially to all the inhabitants of a town or city, for the indifference or ignorance or neglect of one man will nullify the precautions taken by all others in that locality. Such ordinance as is here in question is a necessary protection, which will be extended in its scope with the increase of knowledge and can never be diminished. The requirement of sewerage will be better than such ordinance as this which is the minimum.
>
> The enforcement of such regulations as this by an officer appointed by the city directly through its officers and employees is not only more economical but it is the only method of making it efficient. * * * "

In conclusion, we are of the opinion that it was the legislative intent, in Section 7207, R. S. Mo. 1929, that cities of the fourth class (as in this particular instance) should have power to pass the necessary ordinance to suppress nuisances, as explained in your letter and ordinance attached, and that the city should have the further right to assess against the owner or occupant

of the property the expenses. If the nuisance is suppressed within the city limits, the expense for abating the same may be assessed against the owner or occupant of the property. Upon his or her failure to pay, the city, under proper ordinance, would have the right to issue a special tax bill against said property for said expenses.

Respectfully submitted,

B. RICHARDS CREECH
Assistant Attorney General

APPROVED:

COVELL R. HEWITT
(Acting) Attorney General

BRC:VC