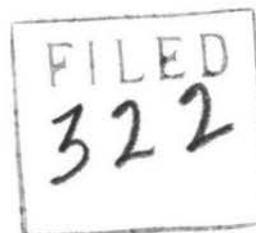


AIR POLLUTION:

(1) The state does not have the power under Chapter 203, RSMo, to force a municipality to pass an ordinance on air pollution; (2) if a municipality does not enact an ordinance on air pollution, the individual council members are not in violation of state law and cannot be punished in regard thereto; (3) if city ordinances are passed in regard to air pollution the city must apply for an exemption from the Missouri Air Conservation Commission under Section 203.150(1), RSMo Supp. 1967, before such ordinances can be enforced; if an exemption is granted but such ordinances are not being enforced the exemption will be revoked under the provisions of Section 203.150(4), RSMo Supp. 1967, but no other penalties can be inflicted upon either the municipality or the city councilmen by the Air Conservation Commission.

OPINION NO. 322

July 10, 1969



Honorable Jack E. Gant
State Senator, District 16
9517 East 29th Street
Independence, Missouri 64052

Dear Senator Gant:

This is in reply to your request for an official opinion of this office, which request reads as follows:

"I would appreciate it if you would have your office supply me with an opinion as to whether the state has the power to force a municipality to pass an ordinance on air pollution. I would further like to know if a city does not enact an ordinance in compliance with the state law on air pollution, whether the individual council members are in violation of state law and can be punished in regard thereto. I would further request an opinion as to what penalties could be inflicted upon either the municipality or upon the city councilmen in the event a city ordinance is passed in regard to air pollution but is not enforced by the aforesaid individuals or municipalities."

Honorable Jack E. Gant

The state law on air pollution is known as the "Missouri Air Conservation Law," Chapter 203, RSMo Supp. 1967, and municipalities are empowered under Section 203.140, RSMo Supp. 1967, to enact ordinances regulating air pollution. We understand your opinion to relate to air pollution as defined by such laws and whether the state has the power under such laws to force a municipality to enact such ordinances.

If a municipality does enact such ordinances that municipality must then apply for an exemption from the Missouri Air Conservation Commission. Section 203.150, RSMo Supp. 1967. To qualify for an exemption the ordinances must be consistent with the state law and regulations. Sections 203.140 and 203.150, supra.

Although municipalities can regulate air pollution, we find no requirement in Chapter 203 or in the Constitution of Missouri or in any other law that municipalities must regulate air pollution. Therefore, the answer to your first question is that the state does not have the power to force a municipality to pass an ordinance on air pollution.

Since the answer to your first question is in the negative, it necessarily follows that the answer to your second question is in the negative.

As to your third question, we know of no penalties that can be inflicted upon either the municipality or upon the city councilmen by the Air Conservation Commission of the State of Missouri in the event a city ordinance is passed in regard to air pollution but is not enforced by such municipality or individuals. What would happen in such a situation is that the Missouri Air Conservation Commission would suspend or revoke the exemption granted to such municipality. Section 203.150(4), RSMo Supp. 1967. A revocation has the effect of repealing the ordinances. Section 203.150(4), RSMo Supp. 1967, reads as follows:

"If the commission determines at any time that a resolution, ordinance or regulation is being enforced in a manner inconsistent with the substantive provisions of this chapter or any standard, rule or regulation hereunder in any political subdivision holding a certificate of exemption, the commission shall suspend the certificate of exemption until such standards are met. If, within ninety days of the suspension, the commission finds that the standards are not being met, the commission shall revoke the certificate of exemption. The effect of the revocation shall operate to repeal the laws of the political subdivision and this chapter shall apply within the political subdivision;"

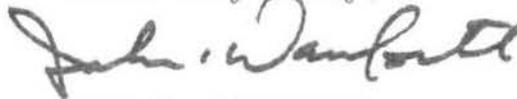
Honorable Jack E. Gant

CONCLUSION

It is the opinion of this office that: (1) the state does not have the power under Chapter 203, RSMo, to force a municipality to pass an ordinance on air pollution; (2) if a municipality does not enact an ordinance on air pollution, the individual council members are not in violation of state law and cannot be punished in regard thereto; (3) if city ordinances are passed in regard to air pollution the city must apply for an exemption from the Missouri Air Conservation Commission under Section 203.150(1), RSMo Supp. 1967, before such ordinances can be enforced; if an exemption is granted but such ordinances are not being enforced the exemption will be revoked under the provisions of Section 203.150(4), RSMo Supp. 1967, but no other penalties can be inflicted upon either the municipality or the city councilmen by the Air Conservation Commission.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Walter W. Nowotny, Jr.

Yours very truly,



JOHN C. DANFORTH
Attorney General