

REVENUE BONDS:
CITIES, TOWNS & VILLAGES:
SEWERS:

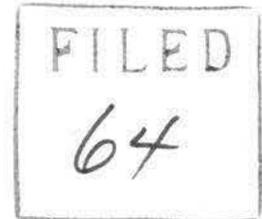
The municipality of Oak View has the authority to conduct a bond election for the issuance of revenue bonds to extend and improve a sewerage system.

The municipality may impose user charges on those persons connected with the system, and need not tax vacant land within the city for the support of the sewerage system.

OPINION NO. 64

March 2, 1970

Honorable Phillip H. Snowden
State Representative
District No. 86
313 Armour Road
North Kansas City, Missouri 64116



Dear Representative Snowden:

Your recent opinion request inquired:

1. Whether the City of Oak View possessed the authority to conduct a bond election for the issuance of revenue bonds for construction of a sewer system, and;
2. Whether it is legal to require payment only from the persons actually using the sewer and not charge all of the vacant property within the village?

The ballot in the special election in Oak View August 26, 1969, provided, in part, as follows:

"Shall the following be adopted:

"Proposition to issue the sewerage system revenue bonds of the Village of Oak View, Missouri, to the principal amount of \$185,000 for the purpose of extending and improving the sewerage system of said Village by constructing lateral sewers, . . ."

Statutory authority for the City of Oak View to construct and maintain a sewerage system is granted by Section 250.010, RSMo 1959. That statutory provision states, in part:

- "1. In addition to all powers granted by law and now possessed by cities, towns and villages

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in this state for the protection of the public health, any city, town or village, whether organized under the general law or by special charter or constitutional charter, and any sewer district organized under chapter 249, RSMo, as that chapter now exists, or as it may be amended, is hereby authorized to acquire, construct, improve or extend and to maintain and operate a sewerage system and to provide funds for the payment of the cost of such acquisition, construction, improvement or extension and operation as hereinafter provided. Such sewerage system may be constructed and operated either within or without the corporate boundaries of any such city, town or village or sewer district."

The provisions relevant to the financing of sewerage systems extended and improved by cities are stated in Section 250.040, RSMo 1959. That section provides:

"The cost to any such city, town or village of acquiring, construction, improving or extending a sewerage system or a combined waterworks and sewerage system may be met:

"(1) Through the expenditure by any such city, town or village of any funds available for that purpose;

"(2) Through the issuance of bonds for that purpose of the city, town or village payable from taxes to be levied by such city, town or village;

"(3) From the proceeds of special assessments levied and collected in accordance with law;

"(4) From any other funds which may be obtained under any law of the state or of the United States for that purpose; or

"(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."

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Therefore, statutory authority exists permitting cities to extend and improve sewerage systems and issue revenue bonds to finance such systems.

Statutory authority also exists for the levying of user charges upon those using the sewerage system. See Section 250.040 (5), RSMo 1959, quoted supra. That provision basically provides that the revenues derived from the operation of the sewerage system are to be used to redeem the revenue bonds issued to extend and improve the system.

Section 250.100, RSMo 1959, authorizes a city to levy user charges to pay the revenue bonds issued for the improvement and extension of the system. This statutory provision provides, in relevant part, that the bonds may be payable from the revenue derived from the operation of the entire sewerage system of the city or from revenue derived from the operation of the sewerage system in a particular locality. The bond election ballot stated that:

" . . . the cost of operation and maintenance of said sewerage system and the principal of and interest on said sewerage system revenue bonds to be payable from the revenues derived by said Village from the operation of its sewerage system."

The foregoing statement as to the source of payment for the revenue bonds is consistent with the authority granted by Section 250.100, RSMo 1959, for extending or improving sewerage systems.

Section 250.120, RSMo 1959, expressly directs a municipality to impose user charges on those connected to the sewerage when revenue bonds are issued. That section specifically states:

"1. It shall be the mandatory duty of any city, town or village or sewer district which shall issue revenue bonds pursuant to this chapter to fix and maintain rates and make and collect charges for the use and services of the system for the benefit of which such revenue bonds were issued, sufficient to pay the cost of maintenance and operation thereof, . . ."

This section also directs the imposition of user charges even if the sewerage system had been financed by other means previously.

Further authority permitting the imposition of user charges is found in Sections 250.140 and 250.150, RSMo 1959. The language

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in these sections clearly indicates that the recipients of sewerage service are to pay for these services through user charges. Therefore it is clear that the municipality could impose user charges on those persons connected to the sewers and is in no way required also to levy charges on vacant property within the municipality.

The decision of *City of Maryville v. Cushman*, 249 S.W.2d 347 [8] (Mo. 1952), construing Chapter 250, the chapter authorizing a construction of sewerage systems, stated that it is permissible for a city to levy a user charge on those connected to the sewerage facility and that the sewerage system need not be maintained by general taxation. That decision stated:

" . . . It is first contended the respondent city may not now make a charge for the use of a presently existing sewer system where no such charge for such sewer use has been heretofore made. . . . We find any number of well-reasoned cases to the effect that such charges may be constitutionally made." (at 353)

After citing numerous other cases, the court continued:

" . . . Authorities upholding the right of municipalities to levy a charge for the use of the city sewerage system could be multiplied. But the above are sufficient. The rule of the above cited cases is that the original construction of a sewerage system does not bind the city to forever maintain it from general taxation, nor may it be implied that a citizen may forever use the sewerage system without charge, and that a charge may therefore be made for the use of the sewerage facility, 'a benefit distinct from that originally conferred by building it.' The respondent city by heretofore maintaining its sewerage system through taxation did not impliedly or otherwise bind itself never to charge for its use. Such sewerage charges are but charges for a service rendered. . . ." (at 353)

Indeed, the concept of revenue bonds embodies the principle that the recipients of the service, and not the public at large, are to bear the costs incurred in rendering the service.

CONCLUSION

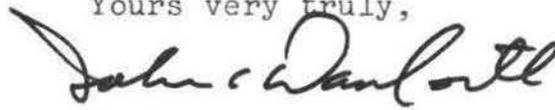
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It is the conclusion of this office that the municipality of Oak View has the authority to conduct a bond election for the issuance of revenue bonds to extend and improve a sewerage system.

The municipality may impose user charges on those persons connected with the system, and need not tax vacant land within the city for the support of the sewerage system.

The foregoing opinion, which I hereby approve, was prepared for me by my Assistant, Peter H. Ruger.

Yours very truly,

A handwritten signature in cursive script, reading "John C. Danforth". The signature is written in black ink and is positioned above the typed name.

JOHN C. DANFORTH
Attorney General