

November 17, 1971

OPINION LETTER NO. 445  
Answer by Letter - C. B. Blackmar



Honorable Robert A. Young  
Missouri Senate, District 24  
3500 Adie Road  
St. Ann, Missouri 63074

Dear Senator Young:

This letter is issued in reply to your opinion request in which you ask the following question:

"Can the City of Bridgeton, a constitutional charter city in St. Louis County, legally enact, by the initiative process, [an] ordinance . . . which ordinance would prohibit the construction of any levee higher than 446 feet above sea level? If the ordinance would not be valid, may the City Council refuse to call an election on the proposed ordinance?"

We first turn to your second inquiry in which you ask whether a city council or equivalent agency is required to submit to the voters an ordinance proposed by initiative petition if it is of the opinion that the ordinance could not be validly enacted. If the council declines to submit the ordinance at an election the proponents may seek mandamus in a court of appropriate jurisdiction. If the ordinance could not validly be enacted the court will refuse mandamus. If it could be so enacted then the council or other agency will be ordered to submit it to the voters. These principles are established in numerous cases including State ex rel. Sessions v. Bartle, 359 S.W.2d 716 (Mo. 1962) and State ex rel. Powers v. Donohue, 368 S.W.2d 432 (Mo. 1963).

Honorable Robert A. Young

We have been furnished with opinions of the city attorney and of special counsel for the City of Bridgeton to the effect that the proposed ordinance would not be a valid enactment. Special counsel considers that the ordinance is a zoning ordinance and concludes that both the city charter and state law forbid the proposal of zoning acts by the initiative.

Both opinions also raise the question of the constitutional validity of the proposed limitation of the maximum elevation of levees under Article I, Section 10 (precluding the taking of property without due process of law) and Article I, Section 26 (forbidding the taking of private property for public use without just compensation) of the Missouri Constitution. It is argued that the effect of the ordinance would be to prevent a property owner from building a barrier to surface water.

These opinions appear to be carefully considered. The issues present complicated questions of both law and fact which can be referred to a court which will reach a decision on the consideration of evidence and the applicable law.

Very truly yours,

JOHN C. DANFORTH  
Attorney General