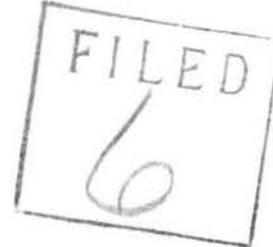


CITIES TOWNS AND VILLAGES:)
BOARD OF PUBLIC WORKS) Authority of Board of Public Works.
CITY OF LOUISIANA :) Board of limited powers.

(Supplemental opinion)

August 19, 1935. 8-21



Mr. Davis Benning
Vice President
Board of Public Works
Louisiana, Missouri

Dear Mr. Benning:

This is to acknowledge receipt of your letter of recent date, which letter is as follows:

"Will you please refer to your opinion to this writer dated March 11, 1935?"

"This opinion was given to me at my request as Vice President of the Board of Public Works of the city of Louisiana regarding the expenditure of monies for the rehabilitation of the water plant in this city, the question being whether this expenditure shall be under the supervision of the Board of Public Works or the City Council. At the time the opinion was requested I sent you a copy of the ordinance of the city of Louisiana establishing the Board of Public Works.

"Your opinion on this question was to the effect that under the ordinance as adopted by the City Council, the expenditure of this money was under the supervision of the City Council, the ordinance having been passed under Section 7654, R. S. Mo., 1929. In your opinion you state that under Section 7655 R. S. Mo., 1929, said Board of Public Works may be given additional powers by the City Council.

"The City Council and the Board of Public Works have not yet agreed upon the interpretation of said Section 7655 and the further question has arisen as to whether or not under this Section, the common council may authorize the Board of Public Works to spend this money, by an ordinance duly passed and approved.

"We would greatly appreciate your opinion on this question at your earliest convenience."

This opinion is supplementary to our opinion of March 11, 1935, to you, mentioned in your present letter of request.

Our conclusions in that letter were that, under the ordinances of the City of Louisiana, as passed and approved, submitted in your former letter, the Board of Public Works did not have the power and authority to expend the \$150,000, for the purpose of reconstructing and rehabilitating the water system and sanitary sewer system in the City of Louisiana, and that the power and authority to expend said money was in the common council of said city.

Your present request is whether or not the common council of your city may authorize the Board of Public Works to expend this money by an ordinance under the provisions of Section 7655, R. S. Mo. 1929, which section we herewith set forth:

"Said board shall also exercise such other powers and perform such other duties in the superintendence of public works, improvements and repairs constructed by authority of the common council or owned by the city as may be prescribed by ordinance. Said board shall make all necessary regulations for the government of the department

not inconsistent with the general laws of this state, the charter of such city or the ordinances thereof."

Your request calls for the interpretation and construction of the above section.

Under Section 7654, R. S. Mo. 1929, it is provided that the Board of Public Works shall "have the power, and it shall be its duty, to take charge of and exercise control over any waterworks, gas works, electric light and power plant, steam heating plant or other device or plant for the furnishing of light, power or heat, etc."; and then further powers may be granted under Section 7655, supra.

As stated in the case of *Schneider v. City of Ann Arbor*, 162 N. W. (Mich) 113, the court said:

"The board of public works is not the governing body of the city; it is a board of limited powers."

In the case of *Chittenden v. City of Lansing*, 79 N. W. (Mich.) 797, the court said:

"Under the charter the city council determines whether it will build a public building. The board then procures plans and specifications, and reports them, with an estimate of cost, to the council. Bids are advertised for, but before a contract can be made it must be authorized by the council. In this case the council authorized a contract to be made binding it to pay \$108,000 for the construction of a building according to certain plans and specifications. The board of public works cannot bind the city by an agreement to increase the contract price. We are not cited to any case upholding such

power. If this arrangement binds the city, then there is no limit to the power of the board to make changes in material and construction at the public expense."

It is thus seen that the Board of Public Works is a body of limited powers and can exercise only such powers as are given it by the statute under which it is created. When Section 7655, supra, is read in connection with the other sections relative to the Board of Public Works, to-wit, Sections 7651 to 7660, inclusive, we do not believe that it was intended that a board of public works should have complete charge and control of the construction of public works, and this is true even though the common council delegated that authority to said board.

It is our opinion that the further powers as mentioned in Section 7655, supra, only give the board further powers in the "superintendence of public works, improvements and repairs constructed by authority of the common council or owned by the city as may be prescribed by ordinance.", and does not give it power to construct said public works. And in the construction of this section it is significant that the word "superintendence" is used and that it has reference to the superintendence of same after the public improvements have been made. We are further inclined to this construction for the reason that if it had been intended by the Legislature that this authority to construct, build and rehabilitate the systems, such as mentioned in your letter, was to have been given to the board of public works, then it would have been easy to have stated in plain and unequivocal terms that this right of construction could be delegated to the board of public works.

Conclusion.

It is, therefore, our opinion that the duty of letting the contracts for the construction and the obligation of reconstructing and rehabilitating the two systems, to-wit, the water system and the sanitary sewer system, rests with the

Mr. Davis Benning

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August 19, 1935.

Common Council and it cannot delegate that authority to
the Board of Public Works.

Very truly yours,

COVELL R. HEWITT
Assistant Attorney-General

APPROVED;

ROY MCKITTRICK
Attorney-General

CRH:EG