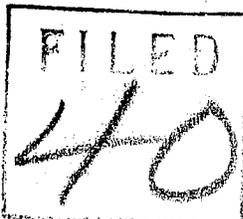


COUNTIES:  
SEWAGE DISTRICT:  
PLANNING  
COMMISSION:

1. County Planning Commission does not have the authority to include in the official master plan of a county a sewage disposal plan when the county lacks the authority to establish the system.  
2. There is presently no authority for Platte County to condemn for right-of-way for a sewage disposal system.



December 6, 1955

Honorable Andrew J. Higgins  
Prosecuting Attorney  
Platte County  
Platte City, Missouri

Dear Sir:

Your October 19 request for an opinion reads as follows:

"Receipt of your opinion prepared by Harold L. Volkmer, bearing the date September 8, 1955, regarding sewer districts in Counties of the third class is hereby acknowledged.

"In the request that follows, I refer also to the conference in Kansas City, Missouri October 13, 1955, where this problem was discussed in considerable detail.

"Pursuant to the conference and the original opinion, the County Court of Platte County, Missouri suggests a request for additional information based on the following facts.

"Platte County is a 3rd class County, lying within the Kansas City metropolitan area, immediately northwest of the Kansas City, Missouri-Kansas City, Kansas city limits. Said County during the past 2 years has undergone substantial changes in the use of its land by subdivision of properties. The number of homes built in the County has steadily increased and the prospect for the future is that this development will continue at an everincreasing rate. However, subdividers have now been advised that sewage disposal plants of the community type, maintained and operated

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by home-owners groups and associations will no longer be acceptable in applications for guaranteed home loans; with the suggestion that the operation of future sewage treatment plants be taken over by the political subdivision involved, i. e., the city, town, village, or County, in which the plant is located. The last named political subdivision is the one here involved since the greater subdivision developments are in unincorporated areas of the County. This situation is rapidly bringing large residential developments to a stand-still. Developers and the Planning Commission are in sympathy with such rulings since the community type treatment is not a final answer to sewage disposal, however, an alternative answer does not readily present itself.

"Based on engineering advice, a lagoon type of disposal plant located in the lower end of a given water shed connected with up-stream developments by permanent sanitary sewers serving the entire drainage district would seem most feasible. The major difficulty confronting such a plan and proposal is the acquisition of right-of-way for the sewers and lagoon; and the establishment of some sort of taxing and assessing structure by which the system could be perpetually operated and maintained. Subdividers themselves, since they are presently required to build their own community type treatment plant, would no doubt be willing to pay the sum of money necessary for that purpose over to the use of the 'sewer authority' for purpose of setting up the original fund necessary to pay for the right-of-way and construction.

"The Platte County Planning Commission has at this time prepared its recommended sewer and sanitary system plan which would

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drain the major water shed draining the present subdivision contemplated. For your assistance, a map is enclosed herein which shows the geographical location of the proposed system in relation to the ultimate outlet i.e., the Missouri river and the subdivision developing at the head of the water shed.

"The recommendation has been in effect approved by the County Court, and accepted by the Court subject to a determination as to how the plan could be put into effect. It is felt that the right of condemnation conferred on County Courts in Chapter 49, R.S.Mo. 1949, is broad enough to include condemnation for this purpose. It is further felt, that the County Court may have the necessary authority to enter into a comprehensive contract with the present subdividers whereby the money that they would at this time expend on their own individual facilities would be placed in a fund to be used for construction of the original trunk lines and disposal plant. As other subdividers enter the area, they would be requested before being granted authority to build, to place a sum in the fund which would cover the cost of constructing the necessary branch lines to drain their subdivision. Those sums would, in the contemplated plan, would be required to be something in addition to the actual cost of construction so that a sum would be available for eventual extension of the system and held against gross maintenance and repair costs.

"In order to determine the propriety of this plan from the stand point of the County Court, the following questions need an answer.

"1. Under the provisions section 64.510 to 690 inclusive, R. S. Mo., 1949 is the recommendation of an overall sewage disposal plan

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for a portion of the County a proper function of this Planning Commission and may same be accepted by the County Court when it encompasses only a part of the unincorporated area of the County?

"2. Irrespective to the answers to question 1, is the authority in Chapter 49, R.S.Mo., broad enough in its scope to authorize the County to condemn the right-of-way for this or any other type of sewage disposal system for the benefit of subdivision areas alone?

"3. Assuming that the right-of-way can be obtained either by virtue of the authority in question 2 or otherwise, may the County Court contract with the subdividers concerned to use their money to build the initial installation?

"4. In view of the possible future expansion beyond the two present subdivisions, can any prospective subdivision be compelled to make a contribution and enter into such a contract as above described, as a condition of his being issued building permits on the land he seeks to subdivide and in view of his probable willingness to provide for his own individual system to handle his own subdivision?

"5. In the event that such contracts are properly within the scope of the County Court, may the money involved be administered by way of an escrow account rather than the County Court directly handling same?"

It appears that question 2 is the main one in your request, and that the answer to question 1 is not particularly pertinent

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because, notwithstanding the authority or "proper function" of the planning commission, the ultimate answer to your problem depends upon the authority of the county court.

It seems from a study of the statutes that the commission does have the authority sought.

Section 64.550, RSMo Cum. Supp. 1951, gives the commission power to make, publish and adopt an official master plan. They may make all of it at one time, or part of it at a time; they may amend it. The statute does not give the commission the authority to make a separate master plan for parks, wildlife refuges, highways, public buildings, sewers etc.

It is noted in the Myers' plan submitted in the preliminary report of the planning commission, which you enclosed, that the statement is made: "Sanitary drainage districts would be created and incorporated into a Master Plan for Sewers \* \* \*" Such a plan might well be included in the official master plan and it might well be that the proposed sewer plan here involved could be included in the official master plan despite the fact that it is not for the entire county. The commission also could provide for this sewer in its set of regulations which would not have to be a part of the official master plan.

Section 64.580 states that the commission may adopt "as parts of the official master plan or otherwise, sets of regulations" which may include "the extent to which \* \* \* sewer \* \* \* services shall be provided" for "subdivisions of land in unincorporated areas."

However, as a practical proposition, it would seem meaningless for the planning commission to have the authority to make plans for the county that the county cannot carry into effect. We are convinced, therefore, that the answer to whether or not the commission has the authority in question depends upon whether or not the county can effectuate those plans. This brings us to a consideration of your question number 2.

It is believed that the opinion submitted to you September eighth of this year answers this question. In the opinion of this office, if the county lacks the authority to create a sewer district or system of any sort it definitely lacks the authority to condemn the right-of-way for any type of sewage disposal system.

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This is so whether the sewage disposal system is for the benefit of subdivision areas only, or whether the system is for the entire county.

It is believed that Section 49.300, which states that the county court may institute condemnation proceedings when they seek to appropriate property "for any other public purpose whatsoever," is not sufficient for the present purpose. It is believed that the words "for any other public purpose" as used herein, merely mean any other public purpose that is constitutionally and legislatively authorized.

In this respect we desire to direct your attention to the statements in the September eighth opinion that Chapter 248, RSMo 1949, might well be used as authority for your county at any time that a part of the sewer district will lie within the city limits of a city having a population of 300,000 inhabitants or more.

In view of the answer to question number 2, it is deemed unnecessary to discuss your questions 3, 4 and 5. They assume an affirmative answer to question number 2.

#### CONCLUSION

It is the opinion of this office that a county planning commission does not have the authority, under Chapter 64, RSMo 1949, to make recommendations for a sewage disposal system or district unless the county has the authority to create such. It is further the opinion of this office that Platte County presently has no authority to condemn for the right-of-way for a sewage district or a sewage disposal system.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Russell S. Noblet.

Very truly yours

John M. Dalton  
Attorney General