

CITIES, TOWNS & VILLAGES: A fourth class city which makes  
ROADS & BRIDGES: street improvements and repairs  
CITY STREETS: under Section 88.703, RSMo 1969,  
can defray, by proper ordinance,  
out of general revenue the cost of said improvements or repairs  
which abutts city owned property, and that all other street im-  
provements and repairs under Section 88.703 must be paid for pro-  
portionately by the abutting property owners.

OPINION NO. 215

August 7, 1970

Honorable Donald L. Manford  
State Senator, District 8  
9409 Oakland Avenue  
Kansas City, Missouri 64138



Dear Senator Manford:

This is in reply to your request for an opinion of this office dealing with a fourth class city, in which you ask:

". . . Can the city defray any portion of street improvements and/or repairs as opposed to assessing the abutting property owners for the full value of same excepting the creation of those public improvements provided for in Section 88.677 and 88.697?"

It is our understanding that your question is whether street improvements and repairs under Section 88.703, RSMo 1969, can be paid for out of city funds or whether the cost of such improvement and repairs must be paid proportionately by the abutting property owners.

Section 88.703, RSMo 1969, provides:

"No formality shall be required to authorize the repairing of sidewalks, or of street or other paving, curbing, guttering, macadamizing or part thereof, or reconstructing the same, and making assessments therefor; but the proper officer or committee on improvements may, without notice, cause such work to be done, keeping an account of the cost thereof, and reporting the same to the board of aldermen for assessment; and each lot or piece of ground abutting on such sidewalk, street, avenue, or alley, or part thereof, shall be liable for its part

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of the cost of any work or improvement provided for in sections 88.700 and 88.703, done or made along or in front of such lot or piece of ground as reported to the board of aldermen, and all lands, lots and public parks owned by any county or city, and all other public lands, all cemeteries, owned by public, private or municipal corporations; provided, that nothing in this section shall be construed to authorize any assessment against any cemetery lot, and all railroad rights-of-way fronting or abutting on any of said improvements shall be liable for their proportionate part of the cost of such work and improvements, and tax bills shall be issued against said property as against other property, and any county or city that shall own any such property shall out of the general revenue funds pay any such tax bill, and in any case where the county or city or railroad company shall fail to pay any such tax bill, the owner of the same may sue such county, city or railroad company on such tax bill and be entitled to recover a general judgment against such county, city or railroad company. Any of said improvements to be paid for by such city may be paid for by said city out of the general revenue funds if the council so desires, but all such work and improvements shall be paid for with special tax bills unless the proceedings of the city for the same specify that payment will be made out of the general revenue funds of said city. The board of aldermen may provide a penalty for failure to pay such special tax within a given time, and any tax bills issued in payment of such repairs shall constitute a lien upon the property liable therefor until paid. All costs for building and constructing sidewalks shall be paid to the contractor therefor, in special tax bills assessed against the abutting property liable therefor, and such tax bills shall constitute a lien upon such property until paid, and shall bear interest at eight percent per annum from the date of issue except as provided in section 88.693."

In Barton County Rock Asphalt Co. v. City of Fayette, (Mo.App.) 155 S.W.2d 771, in construing Section 7210, RSMo 1939 [now Section

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88.703, RSMo 1969], the court held generally that under such statute providing for improvement, paving and repairing of streets of fourth class cities, a city council has the power to improve its streets, but does not have the power to defray the costs thereof out of general revenue funds, except as to the portions of property abutting city-owned property:

"Section 7060, R.S.Mo. 1929, Rev.St.1939, § 7210, provides, in part, that no formality shall be required to authorize the repair of any street paving, curbing, guttering, macadamizing, or the reconstruction of same, and making special assessments therefor, that all costs thereof, shall be borne proportionately by the abutting property, including that of any city owned property; and that tax bills shall be issued therefor. It provides, however, that any of said improvements to be paid for by the city (that is, the proportionate part of the cost to be borne by any city owned property) 'may be paid for by said city out of the general revenue funds if the council so desires,' but not ' \* \* \* unless the proceedings of the city for the same specify that payment will be made out of the general revenue funds of said city.' . . .

\* \* \*

". . . The sections summarized herein provide a very complete scheme for the opening, improvement and maintenance of public streets. The powers of the city are clearly limited and defined therein. It may lay out and open public streets, alleys, and highways within the city, and it may pay the cost of opening, improving, and repairing same as follows:

"(a) The cost of opening, laying out, and grading, and for building bridges, culverts, public sewers and footwalks across same, may be paid from general revenues.

"(b) For gravelling, rocking, macadamizing, paving, and the reconstruction or repair of such streets as have been gravelled, rocked, macadamized or paved, the cost must be paid proportionately by abutting property owners, except where a bond issue has been voted for the purpose as follows:

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"1. On property owned by a person other than the city, by special assessments and tax bills levied against the property;

"2. On property owned by the city it may be paid by issuance of tax bills, or, under certain circumstances, it may be paid out of the general revenues.

"We therefore hold that defendant lacked the power to order the improvement of its streets, in the manner that they were improved, and to pay therefor out of general revenue funds. . . ." (loc. cit. 773-774)

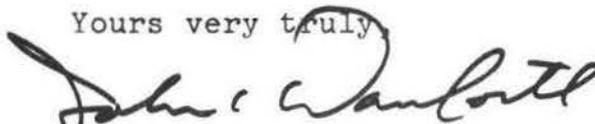
Under the holding of the court in such case, it is clear that expenditures out of the city's general revenues under Section 88.703, RSMo 1969, can be made only on improvements to be paid for by the city, that is, on street improvements or repairs along or in front of lands, lots, public parks and all other public lands owned by the city and that the cost of all other street improvements and repairs under Section 88.703 must be paid proportionately by the abutting property owners.

#### CONCLUSION

It is, therefore, the conclusion of this office that a fourth class city which makes street improvements and repairs under Section 88.703, RSMo 1969, can defray, by proper ordinance, out of general revenue the cost of said improvements or repairs which abutts city owned property, and that all other street improvements and repairs under Section 88.703 must be paid for proportionately by the abutting property owners.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Kenneth L. Romines.

Yours very truly



JOHN C. DANFORTH  
Attorney General