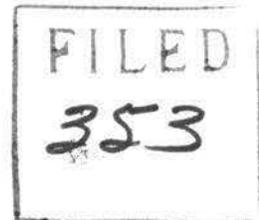


(Answer by Letter) Wood

OPINION LETTER NO. 353

June 26, 1970

Mr. Robert L. Dunkeson
Executive Secretary
State Inter-Agency Council
For Outdoor Recreation
1203 Jefferson Building
P. O. Box 564
Jefferson City, Missouri 65101



Dear Mr. Dunkeson:

You have requested our opinion as to the statutory authority for the City of Memphis, Missouri to build a recreation lake with emergency water supply more than one mile from the corporate limits of the city.

Memphis is a city of the fourth class. Section 88.773, RSMo authorizes a city of this class:

" . . . to erect, maintain and operate waterworks for the city, . . . and to acquire by purchase, donation or condemnation, suitable grounds within or without the city, upon which to erect said works,"

Section 79.380, House Bill No. 45, Seventy-fifth General Assembly authorizes the board of aldermen of a fourth class city to:

" . . . purchase or condemn and hold for the city, within or without the city limits, or within ten miles therefrom, all necessary lands for . . . waterworks,"

We believe that a "waterworks" might properly include an artificial

Mr. Robert L. Dunkeson

lake designed for emergency water supply, and that if the City of Memphis acts pursuant to Section 88.773, RSMo in erecting, maintaining and operating a municipal waterworks, it may acquire and include as a part thereof, a reservoir which is not more than ten miles outside of the city limits.

If the lake is not a component of a municipal waterworks, but is solely recreational in nature, Section 64.755, RSMo, Section 79.390 RSMo and Section 90.010 RSMo would apply. Section 64.755 RSMo authorizes any city to establish recreational areas, Section 79.390 authorizes a fourth class city to purchase and hold public park grounds within the city, or within three miles of the city, and Section 90.010 RSMo authorizes a city to establish parks or pleasure grounds, within the city, or within one mile therefrom. This office has previously ruled that Section 64.755 RSMo does not authorize a city by itself to establish recreational areas outside its corporate limits. (See enclosed Opinion No. 43, January 17, 1967). However, both Sections 79.390 and 90.010, RSMo authorize fourth class cities to establish park grounds outside their city limits. The territorial limitations expressed in these statutes obviously conflict and we are of the opinion that that of the statute specially applicable to fourth class cities must prevail. Accordingly, it is our opinion that the City of Memphis may purchase and hold a solely recreational lake not more than three miles from the city's limits.

Yours very truly,

JOHN C. DANFORTH
Attorney General

Enclosure:

Op. No. 43
1-17-67, Rains