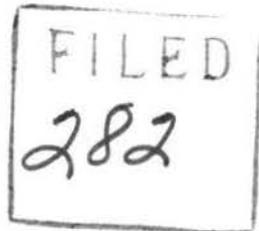


September 22, 1971

OPINION LETTER NO. 282  
Answer by letter-Nowotny



Honorable William S. Brandom  
Prosecuting Attorney  
Clay County Courthouse  
Liberty, Missouri 64068

Dear Mr. Brandom:

This is in reply to your request for an official opinion of this office, which request reads as follows:

"Would you please remit to this office an opinion answering the following questions:

What authority does either the Prosecuting Attorney or the County Health Department of Clay County, Missouri, have to control the activities of persons, firms or cities within the confines of third and fourth class cities on violations pursuant to the following problems:

- a. The disposal of wastes, i.e. solid sewage, debris and refuse;
- b. The creation of conditions that will be condusive [sic] to the spread of contagious and communicable diseases;
- c. The pollution of streams;
- d. The pollution of water used as a source of water for the citizens in third class cities, fourth class cities or villages;

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- e. The pollution of air by the burning of refuse material."

Since your questions are of such broad implication concerning the authority of the prosecuting attorney and the county health department and you have not given us any specific question relating to any particular fact situation, we cannot attempt to give complete answers to your questions. Therefore, we only attempt to refer you to existing statutes that we are aware of concerning statutory duties of the prosecuting attorney and the county health department in the areas listed in your letter.

A

The disposal of solid sewage, debris and refuse.

There are several statutes relating to littering and the depositing of waste in public areas which are enforced by the prosecuting attorney. They are Sections 229.150, 304.160 and 564.480, RSMo. Section 564.480 was repealed and reenacted by House Bill Nos. 93 and 129 of the 76th General Assembly effective September 28, 1971.

Sections 64.460 through 64.490, RSMo, provide for a county option dumping law. Under Section 64.483 the county court of any county may order that Sections 64.460 to 64.490 shall be operative in the county. If the provisions are operative in a county, no person shall dispose of ashes, garbage, rubbish or refuse at any place except a licensed disposal area. Section 64.463. Licenses are issued by the county court after an inspection and report by the Missouri Division of Health. Section 64.470. The county court may revoke the license for cause. Section 64.473.

The prosecuting attorney, then, would have the duty to represent the county court in any such revocation proceeding. In addition, Section 64.487 makes violation of Sections 64.460 to 64.487 a misdemeanor, which, of course, would be enforced by the prosecuting attorney.

We draw your attention to Section 64.480 which reads in part:

" . . . Sections 64.460 to 64.487 shall not apply to any disposal areas operated by or under the control of any city, town or village and being located within the boundaries of such city, town or village."

B

Contagious and communicable diseases.

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Chapter 192, RSMo, provides for a Missouri Division of Health which is given certain duties relating to the control of contagious or communicable diseases. The basic provision is Section 192.020, reading as follows:

"It shall be the general duty and responsibility of the division of health to safeguard the health of the people in the state and all its subdivisions. It shall make a study of the causes and prevention of diseases. It shall designate those diseases which are infectious, contagious, communicable or dangerous in their nature and shall make and enforce adequate orders, findings, rules and regulations to prevent the spread of such diseases and to determine the prevalence of such diseases within the state. It shall have power and authority, with approval of the director of public health and welfare, to make such orders, findings, rules and regulations as will prevent the entrance of infectious, contagious and communicable diseases into the state."

The county courts of the counties of Missouri may appoint a county health officer. Section 192.260. Their duties are as follows:

"It shall be the duty of the county health officers to enforce the rules and regulations of the division of health throughout their respective counties outside of incorporated cities which maintain a health officer. The health officers for incorporated cities of less than seventy-five thousand population shall enforce the rules and regulations of the division of health within their respective cities. Any county health officer who neglects or refuses to perform his duties as required by this chapter shall be deemed guilty of a misdemeanor. In case of dereliction of duty or refusal to act on the part of the county health officer of any county, the division of health may at its discretion declare the office of county health officer for that county vacant." Section 192.280

Enforcement of rules relating to contagious and communicable diseases are by the prosecuting attorney as follows:

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"Any person or persons violating any of the provisions of this chapter or any of the orders, findings, rules or regulations made by the division of health in accordance with this chapter, or who shall leave any pesthouse, or isolation hospital, or quarantined house or place without the consent of the health officer having jurisdiction, or who evades or breaks quarantine or knowingly conceals a case of contagious, infectious, or communicable disease, or who removes, destroys, obstructs from view, or tears down any quarantine card, cloth or notice posted by the attending physician or by the health officer, or by direction of a proper health officer, shall be deemed guilty of a misdemeanor." Section 192.320

C

Pollution of streams.

The basic water pollution law is Chapter 204, RSMo, and the prosecuting attorney is given authority to enforce the provisions of this law by two sections.

Section 204.170 makes violation of any provision of Chapter 204 or of orders of the Missouri Water Pollution Board a misdemeanor. In addition, the prosecuting attorney is authorized to bring suit for injunctive relief to enforce Chapter 204. Section 204.100.

In addition to Chapter 204, Sections 564.010 and 564.480, RSMo, make it a misdemeanor to put certain waste in streams and Section 252.210, RSMo, makes it a misdemeanor to cause any deleterious substance to be placed, run or drained into any waters of the state which injure, stupefy or kill fish. Section 564.010 was repealed and reenacted by House Bill No. 72 of the 76th General Assembly effective September 28, 1971.

D

Pollution of drinking water.

The only statutes we are aware of specifically relating to drinking water are Sections 192.180 through 192.220, RSMo. Section 192.180 empowers the Division of Health to make and enforce rules and regulations for the maintenance of a safe quality of water dispensed to the public. However, Section 192.220 provides as follows:

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"Nothing in sections 192.180 to 192.220 shall apply to the municipal water supply in cities in which a constant supervision of the said city water supply to insure a safe quality of water dispensed is conducted by or is acceptable to the city department of health of that city."

Again, enforcement of the provisions of Chapter 192 and the rules and regulations of the Division of Health is by misdemeanor. Section 192.320.

E

Air pollution.

The basic air pollution law is Chapter 203, RSMo. This law is enforced by the Missouri Air Conservation Commission with civil actions to be brought by the Attorney General of Missouri. Section 203.160, RSMo. We find no specific powers or duties conferred or imposed on the prosecuting attorney or the county health department.

We assume that no action has been taken by any political subdivision in your county under provisions of Section 203.140, RSMo.

Since your request does not state any specific facts concerning any of these problems as they may relate to third and fourth class cities, we are unable to comment further.

We hope that the above references will be of help to you. If you should have additional questions concerning interpretation of any of the statutory duties or authorities listed in reference to a specific factual situation, we will, of course, render an opinion on such questions.

Yours very truly,

JOHN C. DANFORTH  
Attorney General