

BONDS: A fourth class city may issue
LANDFILLS: general obligation bonds for the
CITIES, TOWNS & VILLAGES: purpose of acquiring land and
developing the same for a land-
fill to be used for the disposition of garbage, trash, refuse
matter and municipal waste and that the landfill may be outside
the corporate limits of the city with no restriction on the dis-
tance from the city.

OPINION NO. 409

November 11, 1971

Honorable Robert E. Young
Representative, District 133
208 West Macon Street
Carthage, Missouri 64836



Dear Representative Young:

This is in response to your request for an opinion on the following questions:

- "1. May a city of the fourth class in Missouri under the statutes of law vote and issue general obligation bonds for the purpose of acquiring land and developing the same for a landfill to be used for the disposition of garbage, trash, refuse matter and municipal waste?"
- "2. If the Statutes of Missouri authorize the same, may the landfill site be situated outside the corporate limits of the city, and if so within what distance from the city?"

With respect to your first question, we find no statutory provision which expressly authorizes a fourth class city to acquire land for a landfill. However, Section 71.680, RSMo 1969, provides in part:

"In addition to their other powers for the protection of the public health, each city of the . . . fourth class of this state, . . . may provide for the gathering, handling and disposition of garbage, trash, cinders, refuse matter and municipal waste accumulating in such cities either by itself, or by contract with others,

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. . . and may do such other and further acts as are expedient for the protection and preservation of the public health, as the public health may be affected by the accumulation of trash, cinders, garbage, refuse matter and municipal waste. . . ."

Section 79.690, RSMo 1969, provides:

"Such cities may pass all ordinances necessary for the carrying into effect of the powers granted in section 71.680."

It is our opinion that the acquisition of land for a landfill to be used for the disposition of garbage, trash, and refuse matter is lawful under Section 71.680, RSMo, since a landfill would be a means to the end of ". . . gathering, handling and disposition of garbage, trash, cinders, refuse matter and municipal waste accumulating in such cities. . . ." In addition, the purchase of land for a landfill for such purposes would be an act which furthers the objective of protecting and preserving the public health and, therefore, would be permissible under the language of Section 71.680, RSMo, which permits a city to do ". . . such other and further acts as are expedient for the protection and preservation of the public health, as the public health may be affected by the accumulation of trash, cinders, garbage, refuse matter and municipal waste. . . ."

With respect to issuing bonds to pay the cost of acquiring and developing land for a landfill for the purposes mentioned in your opinion request, Article V, Section 26(b) and (c) of the Missouri Constitution, read together, permit a city to become indebted up to ten percent of the value, for state and county purposes, of taxable property located within the city upon approval of two-thirds of the voters of the city. Implementing those constitutional provisions are several sections in Chapter 95, RSMo 1969. Noteworthy are Sections 95.115 and 95.120, RSMo 1969, which permit a city to become indebted for any purpose authorized "by any general law of this state" (Section 95.115, RSMo); and for ". . . city purposes authorized . . . by any general law of this state, . . ." (Section 95.120, RSMo).

Since we have already ruled that the acquisition of land for a landfill to be used for the purposes mentioned in your opinion request is permissible under Section 71.680, RSMo, that purpose is a city purpose authorized by a law of this state for which bonded indebtedness may be incurred in conformity with the Constitution and statutes of this state.

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Your second question asks whether the landfill site may be located outside the corporate limits of the city. Here we find no statute either expressly authorizing the acquisition and holding of land outside the corporate limits of the city for such purpose or any statute prohibiting the acquisition and holding of land outside of the city for such purpose. Section 79.010, RSMo 1969, provides:

"Any city of the fourth class in this state may become a body corporate under the provisions of this chapter, in the manner provided by law, under the name of 'The city of', and by that name shall have perpetual succession, may sue and be sued, implead and be impleaded, defend and be defended in all courts of law and equity and in all actions whatever; may receive and hold property, both real and personal, within such city, and may purchase, receive and hold real estate within or without such city for the burial of the dead; and may purchase, hold, lease, sell or otherwise dispose of any property, real or personal, it now owns or may hereafter acquire; may receive bequests, gifts and donations of all kinds of property, and may have and hold one common seal, and may break, change or alter the same at pleasure, and all courts of this state shall take judicial notice thereof." (emphasis added)

The underlined portion of that section gives the city the general authority to purchase land without limitation as to location except as specifically limited by other statutes. Reading the underlined portion of that section in conjunction with the authority to establish a landfill which we have already held is authorized by Section 71.680, RSMo, we conclude the city may purchase land outside its corporate limits for the purposes authorized by Section 71.680, RSMo.

Language of the Supreme Court of Missouri in *Hafner v. City of St. Louis*, 161 Mo. 34, 61 S.W. 632, 634 (1901) is in accord with this position. The opinion states:

". . . That the city of St. Louis has authority to purchase real estate under proper conditions and for particular purposes cannot be questioned. By section 1 (Rev. St. 1845, c. 34) of the act concerning corporations, in force when this wharf deed was executed, among its enumerated powers appears the following:

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'To hold, purchase and convey such real estate as the purposes of the corporation shall require, not exceeding the amount limited by its charter.' By the charter of the city upon that subject, then in force, it also in express terms provided that 'the city may purchase, receive and hold property, real and personal, beyond its limits, to be used for the burial of the dead, for the establishment of hospitals, for the receipt of persons infected with contagious and other diseases, for the establishment of a poor house, work house, or house of correction, and for the establishment of waterworks to supply its city with water,' etc.

"Though, among the enumerated charter powers of the city at that time in force, no express power is conferred upon the city of St. Louis to purchase, hold, or receive land for wharf purposes beyond its corporate limits, and while it is true that the city, in that regard, must act within the express or implied authorization of its charter, by reading its charter powers in connection with its general authority under the statute 'to hold, purchase and convey such real and personal estate as the purposes of the corporation shall require, not exceeding the amount limited by its charter,' and remembering that no express restriction is found in the city charter against the purchase of real estate for wharf purposes, it would seem that the city, under its general statutory power, could receive and hold such property, beyond its corporate limits, not prohibited by its charter, and essentially necessary for the purpose of carrying out one of its proper corporate functions and duties, as the establishment, construction, and maintenance of a general wharf system along its river front, and by further bearing in mind the fact that in so doing the beginning or termination of a perfect wharf system must of necessity involve a disregard of the exact corporation limits of the city as at the particular time established. In our opinion, the mere directory power of the charter as to the right of the city to purchase, hold, and receive real estate outside of the corporate

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limits of the city for particular designated purposes should not be construed as an absolute limitation upon the general power conferred upon the city, under section 1 of the statute concerning corporations above cited, to purchase and hold real estate wherever located, when it becomes necessary for the purposes of the corporation. The necessities of the city, under the statute, constitute ample warrant for the purchase of land, wherever located, for other purposes than those designated in its charter; . . ."

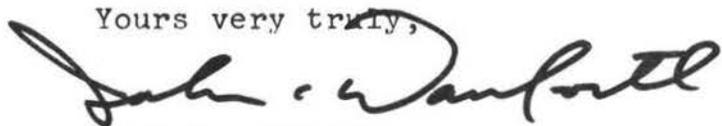
Based on that decision, we believe a city may acquire land outside its corporate limits for a landfill to be used for the purposes mentioned in your opinion request. Further, we believe that there is no limitation on the distance such land may be from the corporate limits of the city.

CONCLUSION

It is the opinion of this office that a fourth class city may issue general obligation bonds for the purpose of acquiring land and developing the same for a landfill to be used for the disposition of garbage, trash, refuse matter and municipal waste and that the landfill may be outside the corporate limits of the city with no restriction on the distance from the city.

The foregoing opinion, which I hereby approve, was prepared by my Assistant, Charles A. Blackmar.

Yours very truly,



JOHN C. DANFORTH
Attorney General