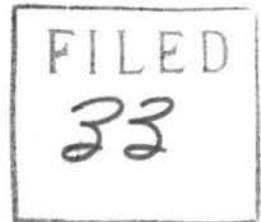


FEES: The State Highway Commission
LICENSES: must now pay, pursuant to
STATE HIGHWAY COMMISSION: Section 204.051, V.A.M.S.,
CLEAN WATER COMMISSION: enacted in 1972, an annual fee
of \$25.00 for a permit to
operate a lagoon for sanitary facilities at a rest area on
state owned land on Interstate 70 in Lafayette County, which
permit was originally issued on May 1, 1967.

OPINION NO. 33

January 5, 1973



Mr. Robert L. Hyder, Chief Counsel
State Highway Commission of Missouri
Jefferson City, Missouri 65101

Dear Mr. Hyder:

This is in reply to your request for an official opinion of this office concerning the question whether the State Highway Commission which obtained an operating permit May 1, 1967 for the purpose of operating a lagoon at a rest area on state owned land on Interstate 70 in Lafayette County is required under provisions of Section 204.051, V.A.M.S., to pay to the Missouri Clean Water Commission a fee of \$25.00 for renewal of such permit.

The permit, when originally issued in 1967, was issued pursuant to Section 204.030, RSMo 1969, and the "Missouri Water Pollution Board Regulations Pertaining to Issuance of a Permit", pp 19-23, Missouri Water Pollution Law and Regulations published by the Department of Public Health and Welfare of Missouri and the Missouri Water Pollution Board.

Since then Chapter 204 has been substantially amended by repeal and re-enactment. S.C.S.S.B. No. 424, Second Regular Session, Seventy-Sixth General Assembly.

Section 204.051, V.A.M.S., of the new law, still requires operating permits, reading in part as follows:

* * *

"2. It shall be unlawful for any person to . . . operate, use or maintain any water contaminant source in this state that is subject

Mr. Robert L. Hyder

to standards, rules or regulations promulgated pursuant to the provisions of this act unless he holds a permit from the Commission, subject to such exceptions as the Commission may prescribe by rule or regulations."

* * *

"Person" includes any agency, board, department or bureau of the state government, and thus includes the State Highway Commission. Section 204.010(4), V.A.M.S.

Section 204.126, V.A.M.S., of the new law provides:

"All standards, rules, regulations, and orders of the Water Pollution Board presently existing shall remain in effect as actions of the Clean Water Commission until such time as the Clean Water Commission may adopt new standards, rules and regulations, which they are hereby instructed to do."

Since the new Commission has not, as of this date, adopted new standards, rules and regulations, the old regulations requiring a permit are still in effect and conform to the new Section 204.051 requiring operating permits.

Thus, the facility for which you have had an operating permit since May 1, 1967 must still have an operating permit. This you apparently agree to. However, you question whether the State Highway Commission must now pay an annual fee for such permit.

Section 204.051 provides in part:

* * *

"9. There shall be a twenty-five dollar fee payable to the State of Missouri with each application for a construction or operating permit before a permit shall be issued. Operating permits shall continue from year to year after date of issuance upon the payment of an annual fee of twenty-five dollars, unless revoked by the commission, . . ."

* * *

This provision does not exempt a state agency, board, department, or bureau of the state government from paying

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the operating fee. Nor does the fact that the permit in question was issued prior to the requirement of the fee exempt payment here. The present permit continues under the new law from year to year, subject only to the new condition of payment of the annual fee. This operating permit is not now, since the date of the new law, any different, or in any different status than a permit issued after the date of the new law.

CONCLUSION

Accordingly, it is the opinion of this office that the State Highway Commission must now pay, pursuant to Section 204.051, V.A.M.S., enacted in 1972, an annual fee of \$25.00 for a permit to operate a lagoon for sanitary facilities at a rest area on state owned land on Interstate 70 in Lafayette County, which permit was originally issued on May 1, 1967.

The foregoing opinion which I hereby approve was prepared by my assistant Walter W. Nowotny, Jr.

Very truly yours,



JOHN C. DANFORTH
Attorney General