

BOATS:
CONSTITUTIONAL LAW:
MISSOURI BOAT COMMISSION:

Senate Bill No. 123 of the 76th
General Assembly, enacting a new
Section 306.260 relating to marine
toilets on boats, is constitutional.

OPINION NO. 151

May 3, 1973

Mr. John V. Buford
Executive Secretary
Missouri Boat Commission
Post Office Box 603
Jefferson City, Missouri 65101



Dear Mr. Buford:

You recently asked this office to issue an official opinion on the constitutionality of Senate Bill No. 123 of the 76th General Assembly, relating to marine toilets. That Act repealed the previously existing Section 306.260, RSMo 1969, and added a new section, to read as follows:

"All marine toilets on any boat, operated upon [the] waters of the state, shall be so constructed and operated as to contain all sewage aboard the boat and not to discharge any sewage into the waters directly or indirectly. No boat shall be equipped to permit discharge from or through any marine toilet, or in any other manner, any sewage at any time into [the] waters of the state, and all sewage when removed from any boat shall immediately be placed in an approved septic tank, sanitary lagoon or sewage treatment system. The provisions of sections 306.250 to 306.290 shall not apply to boats engaged in interstate commerce on the Missouri and Mississippi rivers."

In your opinion request you further state that you have received complaints charging that this law is discriminatory as to the operation of certain vessels upon state waters. You further state that:

". . . It is natural to assume that all vessels will not be equipped with marine toilets, only those vessels large enough to accommodate lodging and overnight stops on the waters of this state."

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The comments accompanying your opinion request indicate that, apparently, contentions have been raised concerning the possible contravention of the Fourteenth Amendment of the United States Constitution and Article I, Sections 2 and 10 of the Missouri Constitution, the provisions guaranteeing due process and equal protection of laws.

In any question involving the constitutionality of statutes, we must start from the initial premise that the legislature is presumed to have enacted constitutional measures. Phillips v. The Missouri Pacific Railway Company, 86 Mo. 540 (1885). Any person attacking the constitutional validity of a statute must establish the unconstitutionality beyond a reasonable doubt, and any remaining doubt as to constitutionality must be resolved in favor of the statute's validity. Graves v. Purcell, 85 S.W.2d 543 (Mo. banc 1935). Your letter has stated no facts that would indicate that this statute is unconstitutional.

The legislative enactment in question is clearly designed to enhance the public health and welfare of the citizens of this state and persons using this state's waters. The legislature of this state, on numerous occasions, has enacted legislation designed to prevent pollution. The exercise of legislative authority to promote public health and welfare is an exercise of the police power of the state.

In describing the limitations imposed upon the exercise of police power by the constitutional guarantee of due process, the Missouri Supreme Court, in Clutter v. Blankenship, 144 S.W.2d 119 (Mo. 1940), stated:

" . . . An action by a state through its legislature, its executive or its judiciary in the proper exercise of the police power, even though it may interfere with the liberty or property of an individual, constitutes due process. True such interference must not be arbitrary, unreasonable or a despotic spoliation of vested rights, and it must reasonably tend to protect and promote the public morals, peace, health, safety and general welfare; but if an exercise of police power meets these tests, it will not be held to violate the requirements of the due process clause even though it does interfere with the property rights of a citizen. . . ." (at 121)

No conceivable state of facts comes to mind that would indicate that one's due process guarantees are abridged by the provision

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in question. Indeed, the control of excremental wastes has been termed the "commonest exercise of the police power of a state." Hutchinson v. City of Valdosta, 227 U.S. 303, 308, 57 L.Ed. 520 (1913). To paraphrase the United States Supreme Court's decision in Williamson v. Lee Optical of Oklahoma, 348 U.S. 483, 488, 99 L.Ed. 563 (1955), "the day is gone when a court uses the due process clause of the Fourteenth Amendment to strike down state laws," regulatory of health and welfare conditions, "because they may be unwise, improvident or out of harmony with a particular school of thought."

A contention that Senate Bill No. 123 of the 76th General Assembly violates the equal protection guarantees of the United States and Missouri Constitutions is equally frivolous. The equal protection clauses of the Constitutions require only that the means and methods be applied impartially to all the constituents of each class, so that the laws will operate equally and uniformly on all persons under all circumstances. Further, the state may make reasonable classifications of persons or things for the various purposes of legislation. If there is a reasonable basis for the classification, and the law operates equally on all within the same class, it is valid. E.g., Hull v. Baumann, 131 S.W.2d 721, 726 (Mo. 1939); State v. Brodnax, 128 S.W. 177 (Mo. 1910), aff'd 219 U.S. 284, 55 L.Ed. 219 (1911).

The uniform operation of this law is apparent on its face. The law applies to "all marine toilets on any boat operated upon the waters of this state." The class affected by this legislation is that of boats possessing marine toilets, operating on the waters of this state. The law clearly operates equally on all within the same class, and is thus valid. The class selected is broad, and clearly not unreasonable. The law does not purport to deal with all vessels but that does not render it constitutionally infirm because the effect of the law is to comprehensively control those vessels having marine toilets. The exclusion from the scope of this provision of vessels engaged in interstate commerce on the Missouri and Mississippi rivers does not render the law constitutionally infirm as such vessels merely constitute a separate class, which the legislature undoubtedly believed would be subject to federal regulation and possibly exempt from state regulation.

CONCLUSION

It is the opinion of this office that Senate Bill No. 123 of the 76th General Assembly, enacting a new Section 306.260 relating to marine toilets on boats, is constitutional.

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The foregoing opinion, which I hereby approve, was prepared by my assistant, Peter H. Ruger.

Yours very truly,

A handwritten signature in black ink, appearing to read "John C. Danforth". The signature is written in a cursive style with a large, prominent initial "J".

JOHN C. DANFORTH
Attorney General