



OFFICES OF THE  
ATTORNEY GENERAL OF MISSOURI  
JEFFERSON CITY

JOHN C. DANFORTH  
ATTORNEY GENERAL

May 16, 1974

OPINION LETTER NO. 203

Honorable Robert T. Johnson  
Representative, District 44  
201 Noleen Lane  
Lee's Summit, Missouri 64063

Dear Representative Johnson:

This is in response to your request for our official legal opinion on the following question:

"Is a water supply district eligible for a grant of state funds under House Bills Nos. 657 & 664, First Regular Session, 77th General Assembly (Sections 192.600 through 192.620 RSMo) and the appropriation contained in Section 6.165, House Bill No. 6, First Regular Session, 77th General Assembly for use in construction of a water distribution system when the district has been approved for a grant and a loan of funds for the project from the United States Department of Housing and Urban Development, and when the district may in addition receive a loan from the United States Farmers Home Administration for the benefit of this project. These federal grant and loans will be fixed in amount at the time the district applies for the state funds and they exhaust the sources of federal funding for this project."

We understand that the Missouri Division of Health has interpreted these state laws as precluding use of the state funds thereby authorized and appropriated for any water supply project which has received or can receive granted federal funds.

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Sections 192.600 through 192.620, V.A.M.S., provide in material part:

"The state of Missouri may make direct grants to aid in the financing of any public water supply district, . . . legally organized in this state . . ."  
(Section 192.600)

". . . The grants may be made to supplement funds from loan proceeds or other private or public sources when such grants are not available through any other state or federal agency."  
(Section 192.605)

"1. The applicant must first apply with the agency or other financial source which is to furnish the primary financial assistance, and after the amount of that assistance has been determined, an application for a grant hereunder may be made to and processed by the division of health. . . ."

"2. No grant shall be finally approved until the applicant furnishes evidence of a commitment from the primary financial source."  
(Section 192.615)

House Bill No. 6, First Regular Session, 77th General Assembly, appropriated the funds for this grant program as follows:

"Section 6.165. To the Division of Health  
For grants to legally organized public water  
supply districts. . . . . \$2,000,000

. . . . .  
From Revenue Sharing Trust Fund . . .  
(This appropriation is made with the intent to replace the amount of anticipated federal funds to be received by each qualifying district should the federal funds not be forthcoming. If such federal assistance is received, this appropriation shall lapse.)"

We interpret these laws to intend that the funds to be administered by the Division of Health for the benefit of specific

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projects of water supply districts should be distributed to those districts which, as the result of executive impoundment, did not receive anticipated federal grants for their projects and that the state grants should replace federal grants withheld in whole or in part from the water district as the result of executive impoundment.

We are led to this construction of the laws by the fact that on January 9, 1973, the Federal Office of Management and Budget directed the Secretary of Agriculture and the Farmers Home Administration to suspend the grant program of the Consolidated Farm and Rural Development Act of 1972, 7 U.S.C.A. § 1921 et seq., specifically § 1926(a)(2) thereof which provided:

"The Secretary is authorized to make grants aggregating not to exceed \$300,000,000 in any fiscal year to such associations to finance specific projects for works for the development, storage, treatment, purification, or distribution of water or the collection, treatment, or disposal of waste in rural areas. The amount of any grant made under the authority of this paragraph shall not exceed 50 per centum of the development cost of the project to serve the area which the association determines can be feasibly served by the facility and to adequately serve the reasonably foreseeable growth needs of the area."

We are also advised that the Secretary of Housing and Urban Development on January 5, 1973, indefinitely suspended the water and sewer grant program under 42 U.S.C.A. § 1492(e).

Although these executive branch impoundments of grant funds may have been of doubtful validity (see, for example, State Highway Commission of Missouri v. Volpe, 479 F.2d 1099 (8th Cir. 1973)), we are not aware that they have as yet been declared invalid. In any event, we believe the impoundments supplied the motive for the enactment of House Bill No. 657 (introduced in the legislature on February 7, 1973) and House Bill No. 664 (introduced on February 8, 1973) and Section 6.165 (added to House Bill No. 6 on June 8, 1973).

House Bill No. 664, as introduced, contained this provision:

". . . State grants may be made to supplement funds from loan proceeds or other private or public sources."

The House Committee Substitute for House Bills Nos. 657 and 664 contained this provision:

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"2. Grants made under the provisions of this section shall only be made to those public water supply districts, sewer districts, or municipal sewer systems which have been certified for loans or funding out of federal funds by the Farmers Home Administration."

The Senate Committee Substitute for House Substitute for House Committee Substitute for House Bills Nos. 657 and 664 contained this provision:

"Section 3. The Division of Health shall administer this program and transmit grant funds to public water supply districts in accordance with the following criteria:

\* \* \*

(2) The public water supply district must be eligible for a loan from the Farmers Home Administration, a bank, a life insurance company, or other private financial institution.

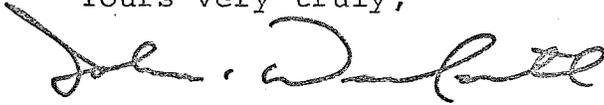
(3) The funds appropriated to carry out this act are supplemental to all other sources. The public water district must have exhausted all other resources and be in need of financial assistance to develop or enlarge the public water supply system."

Viewed in this context, we believe the enacted law, and the statement of purpose accompanying the appropriation measure, represent an intention to replace indefinitely suspended or canceled federal grant programs with this program of state grants to assist in the construction of public water supply systems. We do not believe the law intended to disqualify from the state grant program those public water supply projects which had received federal financial assistance in the form of loans. Rather, we think that the test should be whether there have been at any time federal grants available to the water supply district for its particular project that have been lost in whole or in part as a result of executive impoundment, and if so, then the Division of

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Health should consider and process the grant request according to the criteria specified in the law and the rules and regulations promulgated thereunder.

Yours very truly,

A handwritten signature in cursive script, appearing to read "John C. Danforth". The signature is written in dark ink and is positioned above the typed name.

JOHN C. DANFORTH  
Attorney General