

STATE OF KANSAS

Office of the Attorney General

1st Floor, State Capitol Bldg. (913) 296-2215 Topeka, Kansas 66612

Curt T. Schneider
Attorney General

May 5, 1977

ATTORNEY GENERAL OPINION NO. 77-153

Mr. D. H. Corson, Jr.
City Attorney of Bonner Springs
434 Brotherhood Building
Kansas City, Kansas 66101

Re: Cities--Area-wide Sewer Districts--Powers of Cities

Synopsis: A municipality which consents to be included in an area-wide sewer district organized under K.S.A. 19-27,140 et seq. does not forfeit any lawful authority and jurisdiction for the construction of sewer facilities, including interceptor sewers, within the territorial limits of said city.

* * *

Dear Mr. Corson:

You inquire concerning the legal capacity, authority and jurisdiction of the City of Bonner Springs, Kansas, to provide sewerage services within the city, notwithstanding the city has consented to be and has been included in an area-wide sewage disposal district, Wyandotte County Sewage Disposal District No. 1, which was created by the Wyandotte County board of county commissioners by resolution on May 27, 1976, pursuant to K.S.A. 19-27,140.

The question arises as a result of the application of the City of Bonner Springs to the U.S. Environmental Protection Agency, Region VII, for funds under Title II of the Federal Water Pollution Control Act Amendments of 1972, to construct Spring Creek Interceptor, an interceptor for the transportation of sewage which would be located completely within the Bonner Springs city limits. In order to determine whether the city is an eligible applicant,

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the city must have the legal authority to construct the interceptor sewer, and the question is raised whether the city has lost that authority and jurisdiction as a result of its incorporation in the area-wide sewer district.

You enclose with your letter certain background information concerning the formation of the area-wide sewer district. It appears that some time prior to 1976, the City of Bonner Springs determined that it was not financially able to replace its existing primary treatment plant and construct secondary treatment facilities without federal assistance, an application therefor having been denied. In 1976, it was suggested that a county sewer district be organized, an interceptor sewer be constructed from Bonner Springs downriver through Edwardsville to the proposed site of the Kansas City, Kansas, treatment plant, which is now under construction, and that the district contract with the City of Kansas City, Kansas, for treatment of sewage from Bonner Springs, Edwardsville, and the rural environs. The two cities pointed out that it did not wish to expand the functions of the area-wide district further than building the one interceptor along the west bank of the Kaw River to connect the cities to Plant No. 20. Thus, proceedings under K.S.A. 19-27,140 were commenced. In Resolution No. 1976-15, adopted by the City of Bonner Springs March 16, 1976, the city urged the Wyandotte County board of county commissioners to organize a county sewage district

"encompassing the watershed areas of the Cities of Bonner Springs, Kansas; Edwardsville, Kansas; and the balance of the unincorporated areas lying in this watershed area for purposes of handling and transporting waste water for treatment and the treatment of the same."

By Resolution No. 1976-25, the city consented to the "inclusion of the City of Bonner Springs within the boundary lines of the Wyandotte Sewage Disposal District No. 1, all in accordance with K.S.A. 19-27,140."

Despite the resolution of the city reciting the limited role which it envisioned for the area-wide sewer district, its powers are those granted by K.S.A. 19-27,140 et seq. That initial section describes its powers briefly thus:

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"Each district created under the provisions of this act shall be a body corporate with authority to levy taxes and special assessments and fix and collect charges; to enter into contracts; to sue and be sued and to establish, construct, operate and maintain a sewage disposal system including such treatment facilities as the district may require and to issue bonds for the payment of the costs of constructing such system in the manner hereinafter provided."

The authority granted counties under K.S.A. 19-27,140 et seq. is stated to be in addition to all other authority granted by article 27, chapter 19, K.S.A. This section continues thus:

"[P]roperty now or hereafter included within the boundaries of . . . assessment district created by cities under the authority of article 6a of chapter 12 of the Kansas Statutes Annotated . . . may be included within the boundaries of districts created under the provisions of this act and such property shall be subject to reapportionment of assessment for additional costs in the manner and in accordance with the formula set out in K.S.A. 1973 Supp. 19-27,149."

There is nothing in this section or elsewhere in the 1973 act which authorizes area-wide sewer districts which suggests that the powers of municipalities under article 6, ch. 12, K.S.A. respecting sewage facilities are displaced upon the establishment of an area-wide sewer district. The quoted language above expressly provides that a city-created assessment district may be incorporated in an area-wide district; however, there is nothing from which to infer that a city may not create an assessment district for sewer purposes within its territorial limits after the city's inclusion in an area-wide sewer district.

It is a general rule that "there cannot be at the same time, within the same territory, two distinct municipal corporations, exercising the same powers, jurisdiction, and privileges" 56 Am.Jur.2d, Municipal Corporations, § 40. In City of Aurora v. Aurora Sanitation District, 149 P.2d 662 (Colo. 1944), the court stated thus:

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"This rule does not rest upon any theory of constitutional limitation, but upon the practical consideration that intolerable confusion instead of good government, almost inevitably would attain in a territory in which two municipal corporations of like kind and powers attempted to function coincidentally." 149 P.2d at 664.

In order to conclude that in consenting to creation of the area-wide sewer district the City of Bonner Springs thereby abandoned all its legal jurisdiction and authority respecting the construction of sewage facilities including interceptor sewers, it is necessary to rely upon either statutory language which compels that conclusion, or upon the cited public policy against dual municipal jurisdiction.

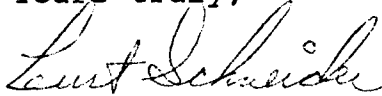
As indicated above, there is no statutory language which remotely suggests that a city in consenting to inclusion in an area-wide sewer district thereby forfeits its statutory or constitutional powers regarding public sanitation and for the construction of sewage facilities. Nothing in K.S.A. 19-27,140 provides, e.g., that title to existing facilities of municipalities included in the area-wide district shall vest in the district itself. The cities' power to consent to inclusion in an area-wide district is very likely provided because of the power of the district to levy taxes and special assessments upon property in the district. The consent appears to be precisely that, a consent, and not a forfeiture of existing municipal powers in any respect. In short, I find no statutory support whatever for a conclusion that the City of Bonner Springs forfeited or abandoned either its statutory or constitutional powers regarding public sanitation and specifically, the authority to construct sewer facilities, including interceptor sewers, in its consent to inclusion in the area-wide district.

Secondly, the public policy against two municipalities exercising like jurisdiction over a single area has little application here. The costs of sewer facilities, including main trunk, intercepting and outfall sewer, there is virtually no likelihood of confusion between the city and the area-wide district in the discharge of their respective duties, responsibilities and authority for the provision of sanitary sewage facilities. There is no likelihood of any threat to "good government," or sound administration, or potential for the duplication of facilities of conflicting assertions of jurisdiction.

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Accordingly, I conclude that in consenting to be included in Wyandotte County Sewage Disposal District No. 1, the City of Bonner Springs did not forfeit any of its lawful jurisdiction and authority for the construction of sewage facilities, including the construction of interceptor sewers.

Yours truly,



CURT T. SCHNEIDER
Attorney General

CTS:JRM:kj

cc: Mr. John H. Morse
Regional Counsel
United States Environmental
Protection Agency
Region VII
1735 Baltimore
Kansas City, Missouri 64108