

HEALTH: County public health center operating under Chapter 205,
COUNTIES: RSMo 1949, has no express or implied power to purchase
site for county garbage dump.

October 22, 1952

10/21/52



Honorable Wayne W. Waldo
Prosecuting Attorney
Pulaski County
Waynesville, Missouri

Dear Mr. Waldo:

The following opinion is rendered in reply to your request reading as follows:

"The opinion of the Attorney General is respectfully requested on the following situation:

"Pulaski County, Missouri has a one mill tax levy to 'establish, maintain, manage and operate a public health center'. Is it permissible for the Health Department of Pulaski County to purchase a tract of land situated in Pulaski County to be used as a County Dump Ground for rubbish, etc., at an expense of approximately \$100.00? Can the Health Department of Pulaski County purchase a one half interest in a tract of land for such a purpose where the other half interest will be held by the City of Waynesville, Missouri? Can the money for the purchase of this land be taken from the money obtained under the one mill tax levy?

"Where such a one mill tax levy exists, can Pulaski County take money from General Revenue, Class 5, to purchase land for such a purpose? Can Pulaski County take money from any fund or revenue of any kind for such a purpose?

"The opinion of the Attorney General will be greatly appreciated on these questions."

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Statutes governing the county public health center established in Pulaski county are found at Sections 205.010 to 205.130 RSMo 1949, as amended by repeal and reenactment disclosed in House Bill No. 307, passed by the 66th General Assembly of Missouri. The only provision of said law granting authority to the governing body of the county public health center to purchase sites of any kind is found in paragraph 4 of Section 205.042 RSMo 1949, as repealed and reenacted, which provides:

"4. The board of health center trustees shall make and adopt such by-laws, rules and regulations for their own guidance and for the government of the county health center as may be deemed expedient for the economic and equitable conduct thereof. They shall have the exclusive control of the expenditures of all moneys collected to the credit of the county health center fund, and of the purchase of site or sites, the purchase or construction of any county health center buildings, and of the supervision, care and custody of the grounds, rooms or buildings purchased, constructed, leased or set apart for that purpose. All moneys received for the county health center shall be deposited in the county treasury to the credit of the county health center fund, and paid out only upon warrants ordered drawn by the county court upon properly authenticated vouchers of the board of health center trustees."

We find nothing in the language quoted from Section 205.042 which authorizes trustees of a county public health center to purchase a site to be used for a county dump ground. No facts are disclosed in the opinion request which lead us to believe that power to acquire a site for a county trash or garbage dump may reasonably be implied from the grant of power to establish the county public health center, and such presumption may not be indulged in the absence of such facts. The right to acquire a site for a trash dump necessarily involves a duty to provide such a service. This service involves acts done in the interest of public health and safety under properly delegated police power of the state. In 11 Am. Jur., Constitutional Law, Sec. 271, pp. 1020-1023, we find the following language:

"One of the most important fields of legislation in which a state may enact measures under the police power is that of regulations in the interest of public

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health and safety. No exhaustive examination of all the matters which may be regulated under this object of the police power is practicable, but under it laws may be passed * * * providing for the collection and removal of garbage, refuse, and effal in thickly populated cities; and, in general, prohibiting the maintenance of any unsanitary condition which amounts to a nuisance."

The State of Missouri, by statute, has delegated police power to cities to enable such municipalities to deal with the important problem of garbage disposal, and such statutes clearly demonstrate that disposal of garbage and other refuse is a municipal function and not a county function. Section 71.680 RSMo 1949, applicable to cities of the second, third and fourth classes in this state, provides as follows:

"In addition to all powers now possessed by cities of the second, third and fourth classes in this state for the protection of the public health, each city of the second, third, or fourth class of this state is hereby authorized and empowered to provide for the gathering, handling and disposition, either by itself, or by contract with others, for the gathering, handling and disposition of garbage, trash, cinders, refuse matter and municipal waste accumulating in such cities; and to pay for the same out of general revenues or by collection of charges for such service, and to do such other and further acts as may be deemed expedient for the protection and preservation of the public health, as such public health may be affected by the accumulation of trash, cinders, garbage, refuse matter and municipal waste; to acquire by purchase, construction, lease, gift or otherwise, within or without the corporate limits of such cities an incinerator or incinerators for the destruction of such garbage, trash, cinders, refuse matter and municipal waste; to acquire by any of such means all equipment necessary or expedient for use in the collection, handling and disposition of garbage, trash, cinders, refuse matter and municipal waste, to acquire by any of such means a purification plant or plants or sewage disposal plant

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for the purification of all sewage accumulating in such cities. Such incinerator or incinerators, equipment, purification plant or plants or sewage disposal plant, may be acquired by such cities with funds derived from the issue and sale of bonds in the manner provided by law for the issue and sale of bonds for other public purposes; or such may enter into contract for the construction or purchase of such incinerator or incinerators, equipment or purification plant or plants or sewage disposal plant to be paid for out of the general revenues of such cities in annual installments; provided, however, that the period of payment for any such incinerator or incinerators, equipment, purification plant or plants or sewage disposal plant, or any contract for the construction, purchase or lease thereof out of the general revenues of such cities shall not extend over a longer period of time than ten years."

In view of the language contained in Section 71.680, RSMo 1949, quoted above, which unquestionably makes the disposal of garbage and refuse a municipal function, and in the absence of any statute clothing a county public health center with authority to acquire sites for such a purpose, it must necessarily be concluded that no power exists in a county public health center, operating under the provisions of Chapter 205, RSMo 1949, as amended, to purchase a site for such purpose. Having so concluded, it is unnecessary to dispose of other questions posed in the opinion request.

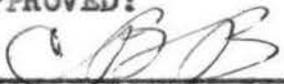
CONCLUSION

It is the opinion of this department that a county public health center operating under the provisions of Chapter 205, RSMo 1949, as amended, is without express or implied authority to purchase a site to be used as a county dump ground for rubbish.

Respectfully yours,

JULIAN L. O'MALLEY
Assistant Attorney General

APPROVED:



J. E. TAYLOR
Attorney General

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