

Improvement Districts—Residents Outside of District Making Use of Such Improvements.

A city council may grant permission to residents residing inside the city limits but outside of a water or sewer improvement district to connect up with the same.

August 29, 1917.

Hon. Railroad and Public Service Commission,
Building.

Gentlemen:

Your letter of June 28th enclosing copy of a letter from C. H. Blitman, City Manager of Glasgow, relative to the right of the City Council's authority in granting permission to residents residing inside the city limits, but residing outside of the water or sewer improvement districts, to tap onto the sewer or connect onto the water mains for the purpose of obtaining water or using the sewer system, received. You ask me for my official opinion relative to the same.

By Section 3382, Revised Codes as amended, by Chapter 89, Section 15, page 404, Session Laws 1913, Section 3413 Revised Codes, and Section 3259 Revised Codes, the Legislature gives the city power and authority to construct, establish and maintain sewer and water systems.

It is the public policy of this state to confide to the citizens of municipalities the right of local self-control to the utmost extent compatible with an orderly system of State Government.

State v. Edwards, 42 Mont. 135-111 Pac. 734.

Where a City by its Charter has the power to make drains, and compel owners of occupied lots to connect the same with public sewers, and to prescribe the form and construction of private drains, it can grant to a citizen the right to construct a sewer in the street at his own expense, which when constructed by him, may be used without interference by other citizens without his consent.

Boyden v. Walkley, 71 N. W. 1099 (Mich.)

A municipality may require persons making connections with a public sewer to pay for the privilege of using the sewer, on the ground of reimbursement for the amount expended by it in constructing or maintaining the sewer.

Fergus Falls v. Edison 102 N. W. 218-(Minn.)

Carson v. Brockton, S. Com. 56 N. E. 1-(Mass.) 132 U. S. 398.

Belding Bros. v. Northampton S. Com. 58 N. E. 156 (Mass.)

As a rule the right given a property owner to connect with a municipal sewer is in the nature of a license only, and does not become a vested right merely because he was put to considerable expense in constructing a drain from his premises and connecting with the sewer. The municipality has a right therefore, if the sewer with which the connection is made becomes a nuisance, to require such drain to be disconnected therefrom, without being liable to the owner of the drain in damages.

Camp v. Barre 66 Vt. 563; 29 Atl. 1022.

By reason of the foregoing statutes and cases cited, I am of the opinion that, the City Council may, in their discretion, permit property owners residing outside of the special improvement districts to connect with the main sewer. The construction of such sewer must be under the supervision of the city, and the location, kind and size of pipe must be prescribed by the City. The City may charge a reasonable amount for such connection and charge a reasonable amount or levy a reasonable annual tax for the maintenance of the same. However, if such main sewer is not of sufficient size to carry the additional sewerage caused by reason of such connection and the result would be to clog such mains, the City Council may legally refuse to permit such connection. And further, if after permitting such connection to be made, the result would be to crowd out or prevent the residents residing in such special improvement district, from using such sewer, then the City Council may and should order the discontinuance of the use of such sewers.

It is also my opinion that the City Council may, if the City has a present surplus of water and the water mains are of sufficient size to carry such surplus, permit residents of the city residing outside of the special improvement districts, to connect with the water mains. The construction of such water laterals, should be under the supervision of the City and the location, kind, and size of pipe should be prescribed by the City. The City may charge a reasonable amount for such connection and charge a reasonable amount, or levy a reasonable annual tax for the maintenance of the same. If such water main is not of sufficient size to carry such water required for the purpose of supplying such additional laterals, and the result would be to interfere with the water supply of the residents in the special improvement districts, the City Council may legally refuse to permit such connection, and if after such connection has been permitted to be made, the result would be to deprive the residents of such special improvement districts of a sufficient supply of water, then the City Council may and should order the discontinuance of the use of such laterals.

Respectfully,

S. C. FORD,

Attorney General