

VOLUME NO. 37

OPINION NO. 65

MUNICIPALITIES - Sewage rates; CITIES AND TOWNS - Sewage rates; PUBLIC SERVICE COMMISSION - Jurisdiction over municipal sewer rates; REVISED CODES OF MONTANA, 1947 - Sections 11-966, 11-1101, 11-2216, 11-2217 to 2221, 11-2302, 11-2303, 11-2401 to 2414.

HELD: Section 11-2216 confers jurisdiction over municipal sewage rates upon the Public Service Commission only when the city finances its sewer system under the SID method for district sewers and appropriates money from the general or sewer fund, or issues municipal bonds for public sewers, and the city has obtained voter approval to impose such rates as provided in section 11-2216(3).

13 September 1977

Gordon E. Bollinger, Chairman  
Public Service Commission  
1227 11th Avenue  
Helena, Montana 59601

Dear Mr. Bollinger:

You have requested my opinion on the following question:

Under what circumstances does R.C.M. 1947, section 11-2216 confer jurisdiction over municipal sewer rates upon the Public Service Commission?

Section 11-2216 is but one of several statutes relating to municipal sewers and sewage systems. See also section 11-966 (purposes for which a city or town may incur indebtedness), sections 11-2401 to 2414 (Municipal bonds and indebtedness), sections 11-2401 to 2414 (Municipal Bond Act of 1939), sections 11-2217 to 2221 (authorizing cities and towns to establish sewage systems, treatment plants, water supply and distribution systems); and section 11-1101 (authorizing cities and towns to furnish water and sewage service to industries and persons without city limits.)

The language of section 11-2216 is as follows:

11-2216. (5239) Sewer systems. (1) A sewer system may be established in a city or town, which may be divided into public, district and private sewers.

Public sewers may be established and constructed along the principal course of drainage at such times, to such an extent, of such dimensions and material, and under such regulations as may be prescribed by the council; and there may be constructed such branches and extensions of sewers already constructed, or to be constructed, as may be considered expedient.

(2) To defray the cost of such public sewers, the city or town council may appropriate moneys therefor from the general or sewer fund, or by availing itself of moneys derived from a bond issue authorized by the constitution and laws of the state. It is further provided that when a public or main sewer also serves as a district sewer, the city council may assess the property bordering or abutting upon such public sewer, either at the time of its construction or at any future time, for an amount equal to the estimated cost of such district sewer capable of accommodating such property.

(3) And/or to provide such sewer fund, and/or to provide for the retirement of such bonds, and/or the payment of the interest on such bonds, and/or for any purpose herein mentioned, the city council shall, upon being petitioned by five (5) per cent of the qualified electors, at the annual municipal election or at any special election called for that purpose, submit to a vote to the qualified electors, the question whether or not the city council may establish and collect rentals for the use of such sewer system and may fix scale of such rentals and prescribe the manner and time at which such rentals shall be paid, and if a majority of votes is cast in favor of such proposition then the city or town council may establish and collect rentals for the use of any such sewer system and may fix the scale of such rentals and prescribe the manner and time at which such rentals from time to time as may be deemed advisable; providing, that the total revenue to be collected from all of the above sources in a given year shall be provided for by the council in such a manner as to provide funds for the payment of all bond issues and interest thereon, as well as for all necessary expenses of the operation, maintenance and repair of any such sewer system. For the purpose of making such rental charges equitable, property benefitted thereby may be classified, taking into consideration the volume and character of sewage or waste and the nature of the use made of such sewage facilities. Said rentals shall be collected or taxed against the property in like manner as water rentals are

collected and taxed, or by such procedure as may be prescribed in the city or town council, the revenues in this paragraph provided shall be in addition to and not exclusive of other revenues which may be now legally collected for sewer payment.

(4) The funds received from the collection of sewer rentals shall be kept as a separate and distinct fund by the city treasurer, subject only to disbursement by order of the council. This fund shall be used for (1) the payment of the cost of management, (2) maintenance, (3) operation and (4) repair of the sewage system, including treatment and disposal works, (5) for the creation of a sinking fund for the retirement of any indebtedness, (6) for the payment of interest on any such indebtedness, and any surplus in such fund may be used for the enlargement or replacement of the same and for the payment of the interest on any debt incurred for the construction of such sewage system, including sewage pumping, treatment and disposal works, and for retiring such debt, but shall not be used for the extension of a sewage system to serve unsewered areas or for any purpose other than one or more of those above specified.

(5) Any twenty-five (25) or more electors of such a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable or unjustly discriminatory, and the public service commission shall, upon public hearing thereon, file its findings and determination, stating therein in what respect, if any, said rental charges are unreasonable or unjustly discriminatory, and the municipality at interest shall forthwith readjust its rental charges so as to remove any unreasonable or unjustly discriminatory features so found by the public service commission.

(6) It is further provided that all the provisions of this act referring to sewer rentals, shall apply to special improvement districts for the constructing and maintaining and operating of sanitary sewers and storm sewers, as provided for in chapter 133, Laws of 1929 and the powers herein conferred on councils shall be and are hereby

conferred on the several boards of county commissioners for the purposes of said chapter 133, Laws of 1929--in so far as the same relates to sewers.

Section 11-2216 was enacted as a part of special improvement district (SID) legislation in 1913, and contained only subsections (1) and (2). Laws of Montana (1913), ch. 89, sec. 15. The section authorized SID financing of district sewers. Subsection (2) created an exception to SID financing in the case of public or main sewers. Public sewer was defined as "[a] sewer which serves the public and connects with and receives the discharge from district sewers...." Rush v. Grandy, 66 Mont. 222, 227, 218 P.242 (1923). Cities were permitted to finance public sewers only by appropriation from the general or sewer fund, or from the issuance of bonds. Rush v. Grandy, 66 Mont. at 226.

Subsections (3) through (6) were added by amendment in 1933. Laws of Montana (1933), ch. 149, sec. 1. Subsection (3) provided for the creation of the "sewer fund" referred to in subsection (2), and the financing and payment of bonds and interest. The city was permitted, upon petition by the taxpaying freeholders, and election, to establish and collect rentals for the use of the system.

Subsection (5) which granted jurisdiction to the Public Service Commission specifically refers to the petition and election procedure followed in subsection (3):

Any twenty-five (25) or more electors [originally freeholders] of such a municipality may file complaint with the public service commission to the effect that the rental charges so fixed are unreasonable....

This method of financing sewer systems--SID financing in the case of district sewers, and general or sewer fund appropriations or municipal bond issues for public sewers, is no longer the exclusive method of funding.

The Municipal Bond Act of 1939, Laws of Montana (1939), ch. 126, sec. 1, (located at R.C.M. 1947, sections 11-2401 to 2414) permits cities to construct and maintain sewer systems and provides for the issuance of revenue bonds for these purposes. Sections 11-2402 to 2404. Rates, fees, and charges may be collected to finance the undertaking, section 11-2403(d), and voter approval is not required to authorize such charges. Section 11-2409. The Public Service Commis-

sion has no jurisdiction of the rates fixed under this method of financing. Section 11-2412. The system authorized by this Act may extend beyond the territorial boundaries of the municipality. Section 11-2403(b).

Sections 11-2217 to 2221 also permit the construction, operation, and maintenance of a municipal sewage system, financed by rental charges and revenue bonds. Section 11-2217. The Act, Laws of Montana (1943), ch. 149, sec. 1, was erroneously placed in the special improvement district section of the Revised Codes of Montana (1947), and itself contains no authorization for SID financing of any part of the system therein permitted. The Public Service Commission has no jurisdiction over the rates fixed by the city council pursuant to this Act. 22 OP. ATT'Y. GEN. NO. 127 (1948).

Cities may finance sewer systems in three ways: (1) by a combination of SID financing for district sewers, and general appropriation or general municipal bond financing for public sewers; (2) by issuing revenue bonds pursuant to the Municipal Bond Act of 1939; or (3) by utilizing service rentals and revenue bonds as provided in sections 11-2217 to 2221. It is only when the city utilizes the first method of financing as established in section 11-2216, that the Public Service Commission may assume jurisdiction over the rates fixed pursuant to that section.

THEREFORE, IT IS MY OPINION:

Section 11-2216 confers upon the Public Service Commission jurisdiction over municipal sewer rates only when the city finances its sewer system under the SID method for district sewers and appropriates money from the general or sewer fund, or issues municipal bonds for public sewers, and the city has obtained voter approval to impose such rates as provided in section 11-2216(3).

Very truly yours,

MIKE GREELY  
Attorney General