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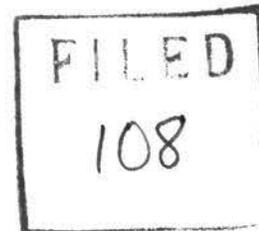
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April 24, 1979

OPINION LETTER NO. 108

ANSWERED BY LETTER - KLAFFENBACH

Honorable Charles J. Becker
State Representative, District 123
House Post Office
State Capitol Building
Jefferson City, Missouri 65101



Dear Representative Becker:

This letter is in response to your question asking the following questions with regard to Section 204.280, as amended in 1978 by House Bill 971 of the 79th General Assembly:

"1. After the change in §204.280, in order to create a common sewer district under Chapter 204, is the election law and procedure in Chapter 115 (specifically §115.121-115.131) the proper procedure to be used?

"2. After the change in §204.280, in order to create a common sewer district under Chapter 204, can a legally binding election be held on August 7, 1979?"

Section 204.280, V.A.M.S., provides:

"1. The circuit court shall by order direct the county court of any county partially within the proposed district to submit to the voters of the proposed district the

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question of the organization and incorporation of the proposed common sewer district, with boundaries as determined by the commissioners and approved by the circuit court.

"2. The county clerk of each county shall certify to the circuit court the results of the election in that portion of the proposed district within his county.

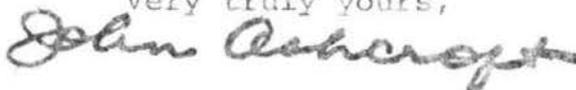
"3. If the circuit court finds that a majority of the votes cast on the question in each county favored the incorporation of the proposed district, the court shall issue a decree incorporating the area described in the commissioners' report as a common sewer district. If the proposition is favored by a majority of those voting in the county containing the major portion of the district but not by a majority voting in the other county, the court shall change the boundaries to include only the area within the one county and shall decree the incorporation thereof.

"4. If the question fails to receive a majority of the votes cast in the county containing the major portion of the proposed district, regardless of the results in the election in the other county, the court shall dismiss the petition and tax the costs of the proceedings and the election against the county which presented the petition."

House Bill 971 made numerous amendments to various sections of the laws so that such sections would conform to the election laws of Chapter 115.

It is our interpretation of Section 204.280 that the circuit court in its order directing the county court to submit the question to the voters concerning the incorporation of the proposed common sewer district will determine the date on which the election is to be held. We assume that the circuit court will make that determination on the basis of the prescribed dates on which elections may be held under Section 115.123. The August 7 date which you mention, of course, would be an acceptable date on which the court could set the election since Section 115.123 authorizes the holding of such election on that date.

Very truly yours,



JOHN ASHCROFT
Attorney General