

MESA COUNTY ATTORNEY'S OFFICE

P. O. Box 3626

Grand Junction, CO 81502

(303) 244-1612

MEMORANDUM

To: Mark Eckert, Assistant County Administrator

From: Steve Johnson, Assistant County Attorney *SJ*

Subject: City Acquisition of Sewer Right-of-Way on behalf
of Mesa County

Date: March 28, 1984

In my prior capacity as Administrative Assistant to the Director of Public Works for the City of Grand Junction, I had the opportunity to observe the practice of acquiring sewer line rights-of-way and permits by the City on behalf of the entire City-County joint sewer system. In several instances, including the Tiara Rado and Goatwash Interceptors and several recovery back sewer line extensions, the City was acquiring such rights-of-way in the name of the City as Grantee in the conveyancing instrument. Such information was not confidential in my capacity with the City.

It occurred to me that the City right-of-way acquisition process was not entirely consistent with the City-County Joint Sewage Agreement. At the time I was with the City, I inquired of Darrell Lowder, City right-of-way agent, as to why sewage easements in areas outside of the City and outside of the sanitation districts were not acquired in the name of the County. He stated that they probably should be, but that he would continue the traditional practice of acquiring them in the name of the City unless the County made a formal request and he was directed by City officials to do otherwise.

The City-County Joint Sewerage Agreement of May 1, 1980 divides the Persigo 201 Service area into four distinct areas. Area one is within the boundaries of the City; Area two is outside of the City but within two miles of the City boundary; Area three are the areas within the four existing sanitation districts; Area four is the rest of the area under county jurisdiction but within the 201 service area, exclusive of the prior areas. Within area one or area three, right-of-way should clearly be acquired in the name of the City or the special districts.

Within Areas two and four, the Agreement provides that those areas shall be controlled pursuant to "Resolution and Operational Procedure" established by the County. Furthermore, the Agreement provides that the County will own the River Road and Redlands Interceptors, together with other lines and facilities within the joint system not owned by the City or the four named special districts. As the City annexes outward, however, ownership of lines in those areas will be transferred to the City.

In the past the City has operated under the assumption that the Resolution and Operational Procedure of the County was to leave the City with unfettered discretion as to the manner of operation control and ownership of the entire sewage system. It is time for the County to address the question of whether it wants to assume any control as to the operational procedure to be followed in construction of new facilities in rights-of-way expansion in Areas two and four. Although I do not suggest that the County would benefit by being directly involved in designing and constructing all facility expansions in those areas, with the possible exception of local improvement districts, I do feel that it would be politically proper and legally correct to request the City to acquire rights-of-way in those areas in the name of the County, as owner of the line. Such a request should be accompanied by a demand to the City to identify all rights-of-way previously acquired in the City's name in Areas two and four. Upon receiving such an accounting, the County should request that in Areas not subject to imminent annexation by the City, that the City transfer legal ownership of those rights-of-way to the County.

Depending on the anticipated extent of County involvement in the day to day expansion in the City-County Sewer System, the County may also consider requesting the opportunity to approve all new construction outside the City which connects to the Sewer System pursuant to paragraph 4B of Section 1 of the Agreement.

In view of the recent problems the County has encountered in securing free and clear right-of-way for the F Road expansion, we should also request that to the extent that the City continues to require right-of-way in the County, the County should require that the City obtain title insurance and releases from the holders of Deeds of Trust of the affected properties.

After you have reviewed these recommendations, I would be happy to discuss this matter with you and to prepare a letter addressed to Jim Patterson incorporating these suggestions.

sbj/jb