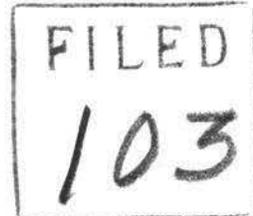


OPINION NO. 103
Answered by Letter - Peterson

March 22, 1965



Honorable Charles H. Dickey, Jr.
State Representative, Audrain County
Capitol Building
Jefferson City, Missouri

Dear Mr. Dickey:

Recently you referred to this office a letter written to you by Mr. Lee Alford Stoutz of Vandalia, Missouri. The contents of the letter indicated that Mr. Stoutz was interested in fluoridating the public water supply of Vandalia. Mr. Stoutz also expressed several questions concerning implementation of such a fluoridation program.

The following discussion will clarify some of the matters raised by Mr. Stoutz. The powers of a municipality are derived from a delegation of power by the state. A fourth-class city has only powers conferred on it by the state in statutes. State ex rel City of Republic v. Smith, 345 Mo. 1158, 139 SW 2d 929. Vandalia, Missouri is a fourth-class city. Official State Manual of Missouri, 1963-64, page 1169. The delegation of authority from the state to fourth-class cities is found in Chapter 79, RSMo 1959. Chapter 79, RSMo 1959, provides for the mayor-board of aldermen type of local government. The legislative power of a city of the fourth class, vested in a board of aldermen and mayor, can be exercised only by ordinance. City of Jackson, to Use of Cape County Savings Bank v. Houck, 226 Mo. App. 835, 43 SW 2d 908.

Fluoridation of the public water supply for the purpose of controlling the disease known as dental caries has been the subject of the following Missouri cases. Readey v. St. Louis County Water Company, Mo., 352 SW 2d 622, and State ex rel Whittington v. Strahm, Mo. (banc) 374 SW 2d 127. The addition of fluoride compounds to the public water supply in the above cases was avowed to be in the interest of public health and welfare. Ordinances enacted to protect the public health and general welfare are considered to be a valid exercise of police power. City of St. Louis v. Evans, Mo., 337 SW 2d 948. The police powers delegated to fourth-class cities are set out in Sections 79.370 - 79.480, RSMo 1959, and Sections 71.680 - 71.780, RSMo Supp. 1961. The above

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statutes, particularly applicable to regulating the public health matters of fourth-class cities specifically, are Sections 79.370 - 79.390, RSMo 1959, and to all cities generally, Sections 71.700 - 71.710, RSMo 1959.

It should be noted that referendum is not applicable to cities of the fourth class. Enclosed are two opinions issued by this office on the matter of referendum in fourth-class cities; one opinion is addressed to Representative Young, dated December 1, 1961, and a subsequent opinion, addressed to Representative Cantrell, dated September 25, 1962.

This office has issued opinions relating to fluoridating water supplies on two different occasions. Enclosed you will find a copy of an opinion addressed to the Honorable Harold W. Barrick, dated July 14, 1954. Enclosed also is an opinion addressed to the Honorable James R. Amos, dated September 17, 1953. The July 14, 1954 opinion concerns whether or not Missouri law prohibits fluoridation of public water supply. The September 17, 1953 opinion interprets particular Missouri statutes in relation to fluoridation.

To our knowledge, no cases in Missouri have ruled on whether fourth-class cities have power to fluoridate its water supply.

Very truly yours,

NORMAN H. ANDERSON
Attorney General

Enclosures (4)

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