Answer by letter-Wood

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OPINION LETTER NO. 120

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L. M. Garner, M.D.
Acting Director
Missouri Division of Health
Broadway State Office Building
Jefferson City, Missouri 65101

Dear Dr. Garner:

You recently inquired if the Division of Health had jurisdiction over cooperatively owned water supply systems for purposes of Sections 192.180 through 192.200, RSMo 1959. We understand that such systems are entirely owned and operated by an association of its consumers, who then, in effect it is contended, are supplying water to themselves. The situation is exemplified by a developer of a subdivision who digs a well to supply water to a group of residential lots, and then sells an interest in the well along with the individual lots until, ultimately, the well is entirely owned by a group of lot owners.

Section 192.180, RSMo 1959, directs the Division of Health to ". . . make and enforce adequate rules and regulations for the maintenance of a safe quality of water dispensed to the public. . ." The division is to collect samples of, and analyze natural or treated water ". . . furnished by municipalities, corporations, companies, or individuals to the public. . ." (Section 192.180, RSMo). A municipal corporation, private corporation, company or individual ". . . supplying or authorized to supply water to the public. . ." must first receive written approval from the Division of Health of the plans of the waterworks, method of purification, and source of supply. (Section 192.200, RSMo). Municipal water supplies approved by the municipality's health department are exempt from the law (Section 192.220, RSMo).

On November 9, 1962, the Division of Health filed with the Secretary of State its Regulations Governing the Installation, Extension, and Operation of Public Water Supplies. The Regulations define "PUBLIC WATER SUPPLY" as:

> ". . . any and all water supply systems furnishing water, whether or not for gain, to more than a single service connection, a community or a municiplaity."

Generally, statutes pertaining to health measures are liberally construed.

> ". . . it is a wholesome and well-recognized rule of law that powers conferred upon boards of health to enable them effectually to perform their important functions in safeguarding the public health should receive a liberal construction. . . ." (State ex rel Horton v. Clark, 9 S.W.2d 635 (Mo. en banc 1928), 39 C.J.S., Health, §9, p. 823)

Reasonable rules of boards of health implementing such statutes will be upheld by the courts barring a clear abuse of discretion (39 C.J.S., Health, §10, p. 824). It is our opinion that the rule of the Division of Health construing the statutory language of supplying, dispensing, or furnishing water "to the public" so as to apply to all water systems with more than a single service connection is a reasonable rule that the courts of this state would uphold. The administrative definition of the term "public" makes it equivalent to the phrase "any other person," which construction, given the nature of the statute and its purposes, is not in our opinion unwarranted. An association of resident lot owners cooperatively owning and operating a water supply system are not only supplying water to themselves but also to one another. A well constructed, owned, and used by a single person or family is one thing, but a well serving more than a single person or family is another matter, and it is this line which we believe the Division of Health has properly drawn to meaningfully implement the statutory mandate.

In State Board of Health v. Crew, 129 A.2d 115 (Md. 1957), the Maryland high court sustained the state health department's closing of a private well (used by a single household) under a statute empowering it to do so when a public water supply was available to the property and the private well "is or may become prejudicial to health."

> ". . . The right of the State to require uniform compliance with reasonable standards designed to insure or tend towards the safeguarding

> of the public health by all, or selected groups of its citizens, is basic and firmly established even though compliance deprives the citizen of one or more of the bundle of rights that together comprise ownership or puts him to added expense. . . . ." (State Board of Health v. Crew, l.c. 117)

We believe a similar approach would be taken by the courts of this state in sustaining the Division of Health's jurisdiction pursuant to Sections 192.180 through 192.200, RSMo, over cooperatively owned water supply systems serving more than a single household.

Yours very truly,

JOHN C. DANFORTH
Attorney General