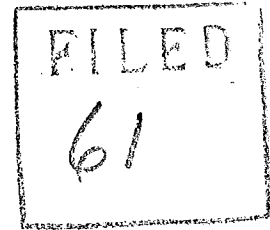


April 11, 1973

OPINION LETTER NO. 61
Answer by letter-Wood

Herbert R. Domke, M.D., Director
Missouri Division of Health
Broadway State Office Building
Jefferson City, Missouri 65101



Dear Dr. Domke:

You have requested my legal opinion on the following question:

"Is the State Board of Health authorized by either Section 192.020, RSMo, or Sections 192.180 to 192.220, RSMo, to adopt and promulgate rules and regulations governing the location and construction of private water wells?"

The laws referred to are here set forth in their entirety:

"It shall be the general duty and responsibility of the division of health to safeguard the health of the people in the state and all its subdivisions. It shall make a study of the causes and prevention of diseases. It shall designate those diseases which are infectious, contagious, communicable or dangerous in their nature and shall make and enforce adequate orders, findings, rules and regulations to prevent the spread of such diseases and to determine the prevalence of such diseases within the state. It shall have power and authority, with approval of the director of public health and welfare, to make such orders, findings, rules and regulations as will prevent the entrance of infectious, contagious and communicable diseases into the state." Section 192.020, RSMo 1969

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"The division of health shall make and enforce adequate rules and regulations for the maintenance of a safe quality of water dispensed to the public and for the collection of samples and analysis of water, either natural or treated, furnished by municipalities, corporations, companies, or individuals to the public and shall fix the fees for any service rendered under the rules and regulations to cover the cost of the service." Section 192.180, RSMo 1969

"The analysis of all water required by this chapter shall be made by the division of health laboratories at Jefferson City, Missouri. All fees or other moneys payable under the provisions of said chapter shall be payable to and collected by the division of collection in the department of revenue and deposited in the division of health, water and sewage fund to be used in payment of expenses incurred by said division, and the state comptroller shall draw his warrant for claims against this fund after such claims have been approved by the director of the division of health. No fees under this section shall be paid by any city or municipality except when the waterworks is owned and operated by said city or municipality." Section 192.190, RSMo 1969

"Every municipal corporation, private corporation, company or individual supplying or authorized to supply water to the public within the state shall file with the division of health a certified copy of the plans and surveys of the water works with a description of the methods of purification and of the source from which the supply of water is derived, and no source of supply shall be used without a written permit of approval from the division of health, and no new supplies shall be established or dispensed to the public without first obtaining such written permit of approval. Whenever an investigation of any water supply, plant, or methods used shall be undertaken by the division of health, it shall be the duty of the municipality, corporation, company, institution

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or person having in charge the water supply under investigation to furnish on demand to the division of health such information as that body considers necessary to determine the sanitary quality of the water being dispensed. Approval of new water supplies for municipalities must necessarily involve consideration of sewage provisions for safety to the public health." Section 192.200, RSMo 1969

"Nothing in sections 192.180 to 192.220 shall apply to the municipal water supply in cities which a constant supervision of the said city water supply to insure a safe quality of water dispensed is conducted by or is acceptable to the city department of health of that city." Section 192.220, RSMo 1969

Section 192.020, RSMo, was enacted in its present form in 1919. L. Mo. 1919, p. 372. Sections 192.180-192.220, RSMo, were first enacted in 1919 and have not been subsequently amended in any material respect. L. Mo. 1919, p. 370. In fact, the enactment of present Section 192.020 (House Bill No. 711, 50th General Assembly) preceded that of present Sections 192.180-192.220 (House Bill No. 712, 50th General Assembly) by but three days.

Sections 192.180-192.220 pertain to persons dispensing or supplying water to the public, and thus would have no application to private water wells or wells used solely by their owners. Therefore, in our opinion, the State Board of Health would have no power to make and enforce rules and regulations applicable to private wells under Sections 192.180-192.220, RSMo.

However, we believe that the Board of Health could find and determine that private wells constitute a source of infectious, contagious or communicable disease and, under the authority of Section 192.020, RSMo, make and enforce reasonable and adequate rules and regulations governing the construction of such wells so as to prevent the entrance and spread of such diseases into this state. We think there can be no doubt as to the relationship between potable water and infectious, contagious or communicable disease.

". . . we take notice of the germ theory of disease, and that the human body may give off germs dangerous to the public health, and that, should these reach the intake of the water supply, they might, as suggested by the State Board

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spread contagion throughout the city." State v. Morse, 80 A. 189, 194 (Vt. 1911)

". . . the established scientific fact that water can serve as a carrier of disease germs to one drinking it is one within judicial notice . . ." State v. Heller, 196 A. 337, 340-341 (Conn. 1937)

In our opinion, the power of the Board of Health to thus regulate private water supply wells under Section 192.020, RSMo, is not denied by the legislature's simultaneous enactment of the law conferring regulatory jurisdiction over public water supply wells, Sections 192.180-192.220, RSMo.

"In Black on Interpretation of Laws, in speaking of statutes in pari materia, it is said: "Especially is it the rule that different legislative enactments passed upon the same day or at the same session, and relating to the same subject, are to be read as parts of the same act."

"To like effect in 2 Lewis' Sutherland on Statutory Construction (2d Ed.) p. 845, whereat it is said: "It is observed that in the comparison of different statutes passed at the same session or nearly at the same time this circumstance has weight; for it is usually referred to as indicating the prevalence of the same legislative purpose, as rendering it unlikely that any marked contrariety was intended."

"It is easy to see why the rule of construction pertaining to statutes in pari materia applies with peculiar force to statutes passed at the same session of a legislative body. In such case we have, in fact, the same minds acting upon the one subject. It is not to be presumed that the same body of men would pass conflicting and incongruous acts. The presumption is that they had in mind the whole subject under consideration; that, whilst the one general subject is touched in several separate acts, yet the legislative intent was that of a harmonious whole. In such case, it is the duty of the courts

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to so construe all the act in such manner that each and every part thereof may stand, if such construction can be attained, without doing violence to the language used in the several acts." State ex rel. Karbe v. Bader, 78 S.W.2d 835, 839 (Mo. banc 1934)

We consider Section 192.020, RSMo, a legislative direction to the Board of Health to adopt and enforce all regulations necessary and proper to the prevention of any infectious, contagious, communicable or dangerous disease. We view Sections 192.180-192.220, RSMo, as a legislative direction of certain minimal steps (i.e., regulation of public water wells) for the Board of Health to take to accomplish this same result, but not as restrictive of additional methods (i.e., regulation of private water wells) which the Board of Health might later find to be necessary for these purposes.

We are also mindful of the rule in this state that powers conferred upon boards of health relating to their safeguarding of public health receive a liberal construction from the courts. State ex rel. Horton v. Clark, 9 S.W.2d 635 (Mo. banc 1928). With particular reference to the subject of drinking water, a court in another jurisdiction has stated:

"When dealing with statutes which promote public health, safety and welfare, courts traditionally apply a liberal construction with respect to supervisory and regulatory powers-- and this is certainly so with regard to water meant for human uses. . . ." City of Newark v. Department of Health of State of New Jersey, 262 A.2d 718, 724 (N.J.App. 1970)

And in the same vein, the Virginia Supreme Court of Appeals sustained a statute authorizing the formation of a water district, requiring all property owners therein to connect to the district water system and an implemental resolution of the district commission requiring all landowners to abandon their use and consumption of any private subsurface water. Weber City Sanitation Commission v. Craft, 87 S.E.2d 153, 157-160 (Va. 1955).

"So far as we know, the power of the State, under its police power, to provide for the health of its people, has never been questioned, but on the contrary, has been stressed as one of the powers which may be given the broadest application; and it is common knowledge that this power has been increasingly

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exercised, in keeping with advances made in the sciences of medicine and sanitation, in recent years. In these circumstance, courts are reluctant to place limits on what may be done in the interest of the health of a community, so long as unreasonable methods are not employed, nor the natural and constitutional rights of citizens invaded.

"The evidence introduced by both parties shows that the subsurface wells here involved, including the well of Craft, are on lots where septic tanks, cesspools and outdoor toilets are maintained; that the water from many of these wells has at one time or another been contaminated and unfit for human consumption, and at one time this was the situation with respect to the well on Craft's property.

* * *

"If Craft and other citizens similarly situated could not be required to connect with the water system provided for under the act its effectiveness would be nullified.

* * *

"The exercise of the police power cannot be circumscribed within narrow limits nor can it be confined to precedents resting upon conditions of the past. As civilization changes and advancements are made the police power must of necessity develop and expand to meet such conditions."

The importance which the legislature of Missouri has attached to public health regulations adopted by the State Board of Health is reflected in the following statutory provision:

"All rules and regulations authorized and made by the division of health in accordance with this chapter shall supersede as to those matters to which this chapter relates, all local ordinances, rules and regulations and shall be observed throughout the state and enforced by all local and state health authorities. Nothing herein shall limit the right of local authorities to make such further ordinances, rules

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and regulations not inconsistent with the rules and regulations prescribed by the division of health which may be necessary for the particular locality under the jurisdiction of such local authorities." Section 192.290, RSMo

We conclude that the State Board of Health has the authority to promulgate regulations with respect to private water wells. However, we emphasize that in order to sustain the regulation of private water wells under Section 192.020, RSMo, it is first necessary that the Board of Health:

- (1) Make a study of diseases;
- (2) Designate those specific diseases which are contagious, communicable, infectious or dangerous;
- (3) Adopt only such regulations pertaining to private water wells as are reasonably designed to prevent the spread of such designated diseases.

Yours very truly,

JOHN C. DANFORTH
Attorney General