

August 29th, 1943

Mr. Geo. W. Marx, C.E., Director  
Sanitary Engineering Division  
Arizona State Department of Health  
Phoenix, Arizona

LAW LIBRARY  
ARIZONA ATTORNEY GENERAL

Dear Sir:

This will acknowledge receipt of your letter dated August 17, 1943, wherein you request an opinion in regard to the following set of facts:

"A community, army post or other agency has a sewage disposal plant in which the effluent, or waste products of the plant, is run off over the surface, of the ground. A cattleman grazes cattle in the vicinity. These cattle come in contact with the sewage liquid and drink it. It is known that cattle drinking such a type of liquid become infested with beef tapeworm, possibly tuberculosis and other diseases.

Is it the responsibility of the cattleman to keep his cattle from coming in contact with this contaminating material, or is it the responsibility of the agency to fence these liquids from cattle?"

Without a more detailed statement of the facts of the particular case which you have in mind, we are unable to render any opinion which would enable you to place the responsibility on either of the parties referred to in your letter.

The question of whether a person, municipal corporation, or other agency, who creates a condition on his property that is injurious to the health or property of another, or to the public generally, is a question of fact which can be determined only by taking into consideration all of the attending facts and circumstances of each individual case. Assuming in your case that a person, community, or other agency having a sewage disposal plant operates it in such a negligent and improper manner as to constitute a private or public nuisance, the responsibility of correcting such a condition would rest upon the party creating it.

It would seem that if in your opinion the sewage disposal plant is operated in such a careless manner as to endanger the health of persons or domestic animals, that section 68-102, Arizona Code Annotated, 1939, gives you the right to correct such a condition.

The negligent and careless operation of a sewage disposal plant by an army post is a matter that should be taken up with the officer

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in command. There is no legal action that you can take against a federal agency maintaining a public or private nuisance on a military reservation.

Respectfully,

JOE CONWAY  
Attorney General

JAMES H. GARCIA  
Assistant Attorney General

EARL ANDERSON  
Chief Assistant  
Attorney General

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