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Robert R. Corbin

November 13, 1990

The Honorable Wayne Stump
Arizona State Senator
State Capitol - Senate Wing
Phoenix, Arizona 85007

Re: I90-096 (R90-114)

Dear Senator Stump:

You have asked whether the federal Safe Drinking Water Act, codified as amended at 42 U.S.C. §§ 300g-1(b)(11) and 300g-2(a)(1), prohibits a municipality from adding fluorides to its public drinking water. We conclude that such a practice does not violate federal law so long as the resultant fluoride level does not exceed the maximum contaminant level prescribed by law.

The purpose of the Safe Drinking Water Act (Act) is to "assure that water supply systems serving the public meet minimum national standards for protection of public health," H.R. Rep. No. 93-1185, 93rd Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 6454, 6454. The Act requires the Administrator of the United States Environmental Protection Agency (EPA) to prescribe national primary drinking water regulations that set maximum contaminant levels, as well as other related regulations. Id., at 6455.

You asked us to review two sections of the Act for any prohibition against adding fluorides to public drinking water. The first, section 1412(b)(11) of the Act, provides as follows:

No national primary drinking water regulation may require the addition of any substance for preventive health care purposes unrelated to contamination of drinking water.

42 U.S.C. §§ 300g-1(b)(11) (emphasis added). The plain language

of this provision prohibits the EPA from adopting a national primary drinking water regulation which requires the addition of any substance for preventive health care purposes. However, the statute does not prohibit the addition of any substance to a public water system for preventive health care purposes.

The legislative history of the Act demonstrates that Congress did not intend to prohibit addition of such substances at a local governmental level:

The Administrator under this section would be prohibited from requiring the addition of any substance other than for the purpose of treating contaminants. Thus, EPA could not require the addition of fluorides or other substances to a public water system for medicinal purposes. Nor could EPA prevent the addition of fluorides or other substances up to the maximum amount allowable under a maximum contaminant level. While EPA could not require the addition of a substance for medicinal purposes, the Agency would have full authority to limit the addition of such a substance if necessary to prevent excessive levels from occurring or to prevent such substance from interfering with the effectiveness of any required treatment techniques.

H.R. Rep. No. 93-1185, 93rd Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News at 6468 (emphasis added). The Act contains no prohibition against the addition of substances to public drinking water for preventive health purposes. See 42 U.S.C. §§ 300f to 300j-11. In implementing the Act, the only manner in which EPA has limited the addition of fluorides to water is by setting a maximum contaminant level of 4.0 milligrams per liter. 40 C.F.R. § 141.11(c).

The other provision of the Act which you asked that we review, section 1413(a)(1), codified at 42 U.S.C. § 300g-2(a)(1), provides as follows:

For purposes of this subchapter, a State has primary enforcement responsibility for public water systems during any period for which the Administrator determines (pursuant to regulations prescribed under subsection (b) of this section) that such State ---

(1) has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations in effect under sections 300g-1(a) [1412(a)] and 300g-1(b) [1412(b)] of this title;

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The Administrator of EPA has determined that Arizona has adopted drinking water regulations which are no less stringent than the national primary drinking water regulations. See Arizona SDWA Primary Enforcement, 43 Fed. Reg. 38,083 (1978). Thus, Arizona has primary enforcement responsibility under the Safe Drinking Water Act and has set the maximum contaminant level for fluoride at the level set by EPA, 4.0 milligrams per liter. A.A.C. R18-4-221.B.1.

In conclusion, federal law neither prohibits nor specifically authorizes the addition of fluorides to drinking water by a public water system. A review of the Safe Water Drinking Act and its legislative history clarifies that EPA has no authority to prevent addition of fluorides up to the amount allowable under a maximum contaminant level. We conclude that a municipality does not violate federal law by adding fluorides to its drinking water so long as the resultant fluoride level does not exceed the maximum contaminant level of 4.0 milligrams per liter.

Sincerely,



BOB CORBIN
Attorney General

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