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Dean Fisher, M.D., Commissioner — Health and Welfare

George C. West, Deputy — Attorney General

Validity of 1954 Vote in Winslow Authorizing Fluoridation of Water Supply

FACTS:

At the annual town meeting of the Town of Winslow held in March, 1954, the inhabitants considered an article, "To see if the inhabitants of the town will vote to approve the addition of fluoride to the water supply distributed to the Town of Winslow by the Kennebec Water District."

Following discussion, a show of hands was called for and the Moderator declared the article accepted. The town clerk has never notified the Kennebec Water District of the result of the vote. No count of the inhabitants present was made.

Fluoride has not been added to the public water supply distributed by the Kennebec Water District.

QUESTION NO. 1:

Was the 1954 vote valid at the time it was given?

ANSWER NO. 1:

Yes.

OPINION:

The first legislation concerning fluoridation of public water supplies was enacted as R.S. (1944) ch. 22, § 122-B, by P.L. 1951, ch. 131. This provided that an agency operating a public water supply could not add fluoride to its water without written approval of the Department of Health and Welfare. The department was authorized to make rules and regulations to carry out the law.

In 1953, by P.L. 1953, ch. 324, this section 122-B was amended and a new section 122-C, added. The new section required a vote by the municipality authorizing the addition of fluoride and making other provisions. The pertinent part reads:

> "In the case of a town or plantation, such authorization shall be by a majority vote of the inhabitants present at an annual town or plantation meeting. In the case of a public utility or agency serving more than 1 municipality, such authorization shall be by a majority vote of the voters voting at such city election and a majority vote of the inhabitants present at an annual town or plantation meeting of each town or plantation served by such public utility or agency; provided, however, that authorization by municipalities representing 80% of the customers served by such public utility or agency shall be sufficient." (These sections became R.S. 1954, chapter 25, sections 144 and 145, respectively.)

In 1957, section 145 was amended by P.L. 1957, ch. 303. There were two amendments which apply to this situation. Both were by the addition of sentences. The first addition provided:

> "Any public utility or agency duly authorized to add fluoride to any water supply shall do so within 9 months after being notified in accordance with the provisions of this section. The town or city clerk shall, within 10 days after the vote, notify the public utility or agency of the vote favoring the addition of fluoride to the public water supply."

The second amendment which has an indirect bearing on this matter reads:

> "Whenever a municipality shall have approved fluoridation it may not again vote on the matter for a minimum period of 2 years from the date of installation of fluoride."

There have been no amendments since 1957, so the foregoing quotes show the statutes as they now exist.

The annual town meeting of 1954 contained a proper article to consider the question of fluoridation. The town clerk's records show this article was accepted. Such record is proper evidence of the action taken at the town meeting. State v. Bailey, 21 Me. @ 66. See also Chamberlain v. Dover, 13 Me. @472, wherein the court said:

> "The town clerk testified, that the record is true as amended which, at least until impeached, must have been presumed without his testimony."

Also Milliken et als v. Town of Old Orchard Beach, 130 Me. 500, wherein it was stated:

> "While in 1928, 1929, 1930 and 1931 the record in words did not disclose a vote, this Court has a right to and does assume that what ought to have been done was done and that an actual vote was taken."

The vote given at the 1954 annual town meeting of Winslow was valid at the time it was given.

QUESTION NO. 2:

Is that vote still valid today?

ANSWER NO. 2:

Yes.

OPINION:

A valid vote once given at a town meeting remains valid until it is reconsidered or reversed at a subsequent meeting. It is not necessary to cite authorities for this well-known statement of the law.

It should also be pointed out that the town of Winslow cannot again consider the question of fluoridation because of the 1957 amendment to chapter 25, section 145, which was quoted supra:

> "Whenever a municipality shall have approved fluoridation it may not again vote on the matter for a minimum period of 2 years from the date of installation of fluoride."

Fluoride not having been added to the public water supply, the town may not vote again.

QUESTION NO. 3:

May the town clerk now legally and effectively notify the Kennebec Water District of the 1954 vote favoring the addition of fluoride to the public water supply?

ANSWER NO. 3:

Yes.

OPINION:

The provision of chapter 25, section 145, concerning notice by the town clerk to the public utility was added to the law in 1957. This was three years after the favorable vote in Winslow. This law was, of course, prospective in nature. It could not be retroactive or retrospective unless clearly so indicated by the act itself. There is nothing in the 1957 act to show an intent to give the act retrospective effect.

Normally, a limitation in a statute will be considered as commencing upon the effective date of the statute. Hence, the question is raised as to whether some 7 years after its passage the town clerk may still legally and effectively notify the public utility of the 1954 vote. The answer depends upon whether or not the limitation is directory or mandatory. If it is directory, a current notification is sufficient. If it is mandatory, such notification would be ineffective.

A good discussion of the difference between mandatory and directory statutes is contained in State v. Smith, 67 Me. 328. At page 332 the court stated the general principle as follows:

> " . . . where a statute imposes upon a public officer the duty of performing some act relating to the interests of the public, and fixes a time for the doing of such act, the requirement as to time is to be regarded as directory, and not a limitation of the exercise of the power, unless it contain some negative words, denying the exercise of the power after the time named; or from the character of the act to be performed, the manner of its performance, or its effect upon public interests or private rights, it must be presumed that the legislature had in contemplation that the act had better not be performed at all than be performed at any other time than named."

The statute contains no negative words limiting the power of the town clerk to perform the duty imposed upon him to the time named. "There is nothing in the nature of the duty to be performed, in the manner of its performance, or in its effect upon public

interests or private rights showing that the legislature intended that, if not performed within the time prescribed, it should not be performed at all." State v. Smith, supra. The duty it imposes upon the clerk is of public concern. Its performance is essential to the determination of when another act by a public utility may have to be performed. However, time was not of great importance, under the facts of this case, as no other municipality obtaining its water supply from the public utility had voted upon the question. The statute requires approval by municipalities representing 80% of the customers served by such public utility.

The town clerk may now, and he should, notify the public utility of the 1954 vote by the town of Winslow.

George C. West
Deputy Attorney General

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