

MAINE STATE LEGISLATURE

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October 10, 1968

The Honorable Harrison L. Richardson
Majority Floor Leader
House of Representatives
103 Exchange Street
Portland, Maine 04111

Dear Representative Richardson:

Pursuant to your written request of September 23, 1968 addressed to this office concerning the validity of the expenditure of public funds by the Department of Health and Welfare to promote fluoridation of public water supplies, we render the following opinion.

A brief resume of the facts is in order. The Commissioner of the Department of Health and Welfare of the State of Maine is empowered to apply for and accept federal funds pursuant to the terms of the Public Health Service Act, P.L. 89-749, in order to carry out a comprehensive health program for the State of Maine. State funds are matched against federal appropriations for the implementation of the entire state-wide health program, but state and federal funds are neither matched nor commingled for each individual category of the health program. The amount of money earmarked for the prevention of dental caries, to wit: advocacy of fluoridation, was \$75,000 of strictly federal funds. We do not believe that a determination of the issue of whether said funds are strictly federal funds administered by a state agency, or state funds, is essential. The funds involved are clearly public funds. The bulk of said funds were used to implement a program of advertising, particularly T.V. commercials, geared to educate the public at large of the benefits of fluoridation. The expenditure of said funds is being questioned by private citizens and organizations opposed to the introduction of fluoride into public water supplies. There are at least ten cities in the State of Maine which have scheduled referenda to determine the question of fluoridation of their water supply.

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We hold that the expenditure of public funds in the above-described manner represents an unauthorized attempt to influence the people's right to determine the question of fluoridation.

The legality of fluoridation is not at issue, for courts throughout the land have upheld the constitutionality of fluoridation of public water supplies. Fluoridation without referendum has even been held to be a reasonable exercise of the police power of the State and not a deprivation of liberty without due process of law. Readey v. St. Louis County Water Co., 352 S.W.2d 622.

It is unnecessary to elaborate upon the fact that the individual cities and towns which will vote on the question of fluoridation possess no authority to spend public funds to influence the voters' decision upon the issue.

In the absence of express statutory authority to the contrary to do so, a state department or agency may not expend public funds, either by itself or by contract with others, where the purpose or the effect of the expenditure is to influence the minds of the voters on a question to be resolved through the elective process, municipal, state, or otherwise.

22 M.R.S.A. § 2435 provides for the determination of the issue of fluoridation of public water supplies solely by the voters of the various municipalities. We discover no legislative intent which would allow the expenditure of public funds by either the state, or any other governmental unit, as a means of influencing a determination of said issue.

We are not unmindful of the duty imposed upon the Commissioner of the Department of Health and Welfare to undertake programs for the improvement of the health of the citizens of the State of Maine. By providing that the issue of fluoridation be determined by local election however, (22 M.R.S.A. § 2435) we conclude that the legislature has greatly reduced the effective use which the Commissioner may make of public funds in order to implement an effective program for the abatement of dental caries.

Nothing in this letter should be construed to limit or prohibit Department heads, state officials or state employees from expressing opinions on controversial matters. Such people frequently have a duty to speak out on matters in controversy. We make the distinction between expressing a view

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or opinion and directly engaging in the active promotion of one side of a controversial issue scheduled to be decided by a public referendum.

Very sincerely yours,

JAMES S. ERWIN
Attorney General

JSE: vbw