STATE OF KANSAS

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CURT T. SCHNEIDER
Attorney General

July 10, 1975

ATTORNEY GENERAL OPINION NO. 75-284

Representative Michael G. Glover
1308 Summit
Lawrence, Kansas 66044

Re: Public Health--Drinking Water--Fluoridation

Synopsis: The Safe Drinking Water Act does not prevent the state from requiring fluoridation of drinking water, so long as the amount of fluoride added does not cause the maximum contaminant level specified by national primary drinking water regulations to be exceeded.

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Dear Representative Glover:

The Safe Drinking Water Act, Pub. L. No. 93-523, took effect December 16, 1974. The purpose of the act is to assure that public water supply systems meet minimum national health protection standards. To this end a joint federal-state system for assuring compliance with drinking water regulations is established. When the Administrator of the Environmental Protection Agency (EPA) determines that a state fulfills the requirements set forth in Section 1413, primary enforcement responsibility passes to the state.

The Administrator is directed to establish federal standards intended to protect from harmful contaminants all those served by public water systems. These federal standards are to be embodied in primary drinking water regulations which, inter alia, are to specify maximum contaminant levels for particular contaminants judged by the Administrator to adversely affect human health. Section 1413 provides that a state may assume primary enforcement responsibility only if it has adopted regulations no less stringent than the national primary drinking water regulations.

Section 1412 of the act deals with promulgation of national primary drinking water regulations. Section 1412 (b) (6) reads:

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

The language of this provision is plain, its meaning manifest and its application clearly limited. We assume that fluoride is a substance for preventive health care purposes unrelated to contamination of drinking water. Section 1412 (b) (6), then, does no more than prohibit a specific federal agency, the EPA, from requiring the addition of fluoride to drinking water by means of regulations promulgated under authority of the Safe Drinking Water Act. Nowhere in the legislation is there further discussion of the matter; nowhere do we discover any suggestion that the federal government intends to totally deprive the individual states of their power to compel fluoridation of drinking water. Where conflict between state and federal law does not clearly exist, it must not be sought out. Maurer v. Hamilton, 309 U.S. 598 (1939); H. P. Welch Co. v. New Hampshire, 306 U.S. 79 (1938); Savage v. Jones, 225 U.S. 501 (1911). In the absence of any hint of prohibition, we must conclude that the states retain authority to compel fluoridation should they so choose.

However, the power of the states in this area is not without restriction. Pursuant to Section 1412 (a) (1), proposed interim primary standards were published by the Administrator in 40 Fed. Reg. 11989 (March 14, 1975). These proposals, if promulgated in present form, would establish a national maximum contaminant level for fluoride. After adoption of this maximum level, the states will not be free to require addition of fluoride in amounts sufficient to cause the level to be exceeded.

Because the act is clear and unambiguous on its face, we have no occasion to resort to legislative history to discern legislative intent. Fairport, P.& E.R. Co. v. Merdith, 292 U.S. 589 (1933). Were such resort necessary, however, the Commerce Committee report which accompanied the bill would confirm our conclusion. At page 6 of S. Rep. No. 93-231 the matter is treated as follows:

> "The Administrator 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 supply system for medicinal purposes. Nor could EPA prevent the addition of fluorides up to maximum allowable under the standards. While EPA could not require the addition of a substance for medicinal purposes, it would have full authority to limit the addition of such a substance if necessary to prevent excessive levels from occurring."

In summary, we determine that the Safe Drinking Water Act does not prevent this state from requiring the addition to drinking water of fluoride in an amount not exceeding standards specified as the maximum contaminant level by national primary drinking water regulations.

Very truly yours,

Curt Schneider

CURT T. SCHNEIDER
Attorney General

CTS/TFW/cgm