

## Legal Department Memorandum

Date: June 27, 2007

To: Mayor, Council, City Administrator

From: Thomas D. Warner, Acting Corporation Counsel

Re: City's Ability to Regulate Water Fluoridation



The legal department was asked to look into the City's ability to regulate water fluoridation. In looking into this matter, a memorandum to Alderman Nickolas dated July 12, 2003 from then Corporation Counsel Mary Thee was found. The memorandum concludes that the City does not have jurisdiction over drinking water quality and cannot stop fluoridation of the water by the Iowa American Water Company. The memorandum was produced in response to a request from Mr. Joel Webber. Mr. Webber has again requested the City take action, and, because Mr. Webber feels so passionately about this issue, I did not want to simply redistribute the 2003 memorandum.

The matter has been researched again, but the conclusion remains the same.

The federal government through its Safe Drinking Water Act (originally enacted in 1974) created a system where the Environmental Protection Agency ("EPA") and a *State*, if the state chose to do so and followed certain strictures, regulate public drinking water within that state. The State of Iowa chose to be a primary regulator of public drinking water. Iowa Code §§455B.171(22), 455B.172(1), and 455B.173(5) vest jurisdiction in the Iowa Department of Natural Resources ("DNR") over the public water supply program including any "treatment" of the water. The relevant sections of the Iowa Administrative Code echo the state code provisions. The Safe Drinking Water Act, the Iowa Code, and the Iowa Administrative Code occupy the field in this area and do not allow the City to assume any jurisdiction over the content of the public drinking water in Davenport.

Under the Iowa Administrative Code section 567-41.3(1), the maximum contaminant level for fluoride in drinking water is 4.0 mg/L. The federal law requires a state to have a standard *at least as strict* as the one the EPA has set. In the case of fluoride the EPA has also set the limit at 4.0 mg/L. As a further restriction, section 567-42.1(1) requires public water suppliers to notify their users if the level of fluoride is above 2.0 mg/L. The recommended level is 1.1 mg/L. The fluoride reading for Davenport's water supply for 2006 was .99 mg/L, and the range of detection was .63-1.27 mg/L.

Mr. Webber may be better served to lobby the DNR and EPA to lower the maximum amount of fluoride in the public water system or eliminate it altogether

as those agencies do have the power to do something should they choose to make a change.

According to the case law, litigation over fluoridation of the water has been going on since the 1950s. Those who oppose fluoridation by initiating litigation have lost time and time again. In fact, a decision of the Iowa Supreme Court in 1961 held that Council Bluffs could enact an ordinance *requiring* the fluoridation of drinking water through its municipal water works.

On a related note, the Iowa Department of Public Health has a water fluoridation grant program through which it provides grants to local governments and nonprofit public water systems for the costs involved in implementing fluoridation. By having such a program, it appears that the state of Iowa encourages fluoridation as a matter of public health.