



Prevention

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Three Legal Opinions on Fluoridation 113

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Three Legal Opinions on Fluoridation

Three judges who dissented from the majority opinion in the Washington State Supreme Court decision give some legal opinions on fluoridation.

WE have recently received a copy of the decisions in the Washington State Supreme Court on water fluoridation. *Prevention* readers will remember that Arthur Kaul of Chehalis, Washington, sued the city to prevent water fluoridation. He lost this case and took the matter to the state supreme court. Here again the case was lost, but by only one vote.

Because they are so pertinent, emphatic and lucid, we want to give you here some of the statements made by three judges who dissented, in other words—those who came to the conclusion, due to the evidence presented at the trial, that fluoridation is illegal.

Judge J. Hill said in part: "We are not here concerned with any question as to appellant's (that is, Mr. Kaul's) right to be furnished with wholesome water, or with any other rights which he might have in connection with the city's duty to furnish water. The significant circumstances are that the ordinance is designed solely for the purpose of effecting the application of fluorine to the teeth of the residents of Chehalis in order to minimize tooth decay in some children. The use of the city water system as a means of accomplishing this purpose means that the aforesaid 'treatment' becomes compulsory for any person who has to rely upon the city water supply as his source of drinking water. Thus the liberty of which (Mr. Kaul) is deprived is the right to decide of his own free will whether he desires to apply fluorine to his teeth for the purpose of preventing tooth decay, based upon his own opinion as to whether it would be advantageous or disadvantageous to his personal health—a matter, incidentally, on

which there is marked and bitter divergence of opinion within the medical and dental profession.

"... While dental caries may be termed a 'disease' which is prevalent in the teeth of almost everyone, it is not contagious or communicable in any way. Dental caries in no way endangers the public health in the sense that its existence in the teeth of one individual might adversely affect the personal health of any other individual. To thus extend the concept of 'public health' would open the door to compulsory mass medication or preventive treatment for any disease, solely on the ground that it is for the individual's own good, without regard to his inherent right to determine such matters for himself.

"... (The city) and its expert witnesses protest against the use of the phrase 'compulsory mass medication.' It would seem, in Shakespearean phraseology, that they 'protest too much.' They concede that fluoridation has no effect upon the water and they urge it solely for the effect it

has upon the individual who drinks the water. But they say it is not medication because it does not cure anything; it is intended merely to prevent dental caries.

Is Fluoridation Mass Medication?

"Medication, in lay understanding, includes prophylaxis or preventive measures when applied to the individual. We hear much of preventive medicine . . . I do not believe that (the) city would seriously contend that the prescribing of drugs for preventive purposes does not constitute practicing medicine. If, however, it is the position of (the) city and its experts that, while giving a preventive prescription is practicing medicine, the prescription, when filled, is not medicine and, when used, is not medication, they are dealing in refinements which escape the lay mind, and which are not reflected in current terminology.

"The majority (that is, the four judges who voted in favor of fluoridation) cites cases approving fluoridation, each making a plausible case for it. They all say, in effect, as the majority says here 'We fail to see, however, where any right, . . . guaranteed by the constitution, has been invaded.' It would, of course, be easier to see if the ordinance under question required every resident of Chehalis (or even every child under fourteen years of age resident therein) to present himself or herself for topical application of fluorides by public health authorities. On the showing here, it would not even be contended that such an ordinance would be constitutional; yet the instant case is no whit different. What the residents of Chehalis could not be compelled (constitutionally) to do one by one, it is now sought to compel them to do *en masse*; a treatment to which they individually could not be compelled to submit is here sought to be applied by more subtle but no less compulsory means. This smacks more of the police state than of the police power.

. . . "If fluorine is indeed the key to dental health and the application of fluorides is readily available to all who desire it, then education and persuasion, not compulsion, seem to be called for. Compulsion is justified on occasion for the protection of the

public when dealing with contagious disease, but when we search for the 'pressure of great dangers' in the instant case, it simply is not there. The ordinance providing for fluoridation is unconstitutional on the ground that it is an unwarranted and unjustified invasion of the liberty guaranteed the appellant by the United States Constitution, amendment 14 and by our state constitution, article I, paragraph 3."

The Precedent that Water Fluoridation Will Set

Judge J. Donworth, also dissenting from the majority opinion, said in part as follows: "It has been suggested that the proposed introduction of fluoride ion . . . into the municipal water supply in the proportion of one part per million is such a trivial matter that no one should be seriously concerned about it. On the contrary, it seems to me that the principle involved is of far-reaching consequence because, if the city council (or commissioners) may legally inject any such medicine into the water, they have the right to put into it any medicinal agent from patent medicines to anti-biotics (so-called 'wonder drugs') which they may from time to time determine to be beneficial to the public health. The practical result is no different than if the municipal authorities forcibly compelled the water consumer to take a daily dosage of such medicine from a spoon because he must either consume it or cease to drink water from the municipal water system.

"By so doing, the municipal authorities, instead of the individual citizen, arrogate to themselves the sole right to decide what medicine is good for the health of the water consumers, and thereby the municipal water system becomes a direct conduit for the transportation of medicine from the apothecary's pestle to the patient without the latter's consent. Thus will the people be deprived of a very important part of their constitutional liberty under our republican form of government and the police state will be substituted for the police power of the state.

. . . "The city of Chehalis is operating a municipal utility in its proprietary capacity pursuant to a statu-

tory authority to maintain, conduct and operate waterworks for the purpose of furnishing its inhabitants with an ample supply of water . . . It will be noted that the city has authority only to furnish its inhabitants with an ample supply of water. Fluoride is not water and has no effect upon either bacteria or plant life in the water . . . and is intended solely for the prevention of tooth decay primarily in young children. It is not used to make the water itself more healthful or to prevent its contamination by bacteria or other noxious matter. It is to be used solely for medicinal purposes, and, when mixed with water, the resulting mixture is a medicine.

" . . . Could a municipality operating a municipal transit system refuse to permit a person to become a passenger unless he produced a certificate that he has submitted to the topical application of fluorides? Could such a person be denied service by a municipal light and power system or by a municipal garbage collector except upon such conditions?

" . . . It is further stated in the majority opinion that no constitutional right of the inhabitants is invaded because the ordinance does not compel them to do anything and that no penalty is attached for refraining to drink the water with the medicine in it. No suggestion is made as to which beverage the inhabitants should drink in lieu of this concoction. Here the city's water system is the sole source of drinking water which is necessary to sustain life. The penalty for not drinking the medicine is to compel the unwilling customer of the municipal water system to buy some bottled beverage or move to another city where only water is pumped through the water mains. Either alternative is as serious a penalty as a fine or imprisonment.

"The inhabitants of Chehalis have bought and paid for a municipal water system for the purpose of obtaining the ample supply of water which the legislature authorized, and those who do not wish to have medicine purveyed to them in their water are entitled to receive exactly what the legislature intended them to have, to wit, water."

And Judge J. Hamley, who also dissented from the majority vote said,

in part, as follows: "The case before us deals with what some will regard as a relatively minor aspect of dental health. But the principle announced is not so limited. It would be equally applicable if fluoridation (or iodination) was being relied upon to counteract goiter or any other non-contagious bodily malady. What future proposals may be made to treat non-contagious diseases by adding ingredients to our water supply or food, or air, only time will tell. When that day arrives, those who treasure their personal liberty will look in vain for a constitutional safeguard. The

answer will be: 'You gave the constitution away in the *Kaul case*.'

"There is no contention in the instant case that the fluorides program represents the majority opinion of the citizens of Chehalis. No referendum vote was taken. Considering the results of referendum votes taken elsewhere, it is, to say the least, doubtful if such a program would meet with the approval of the people of Chehalis. At the November 2, 1954 elections, nine of the eleven American communities which voted on the proposition turned it down.

"It may be that the voting citizens of our country have been influenced by a disquieting concern for their liberties which has so far failed to stir the judiciary.

"But even if it were to be assumed that the majority of the citizens of Chehalis approve of this move, that would not condone an impairment of constitutional rights. The constitutional guarantees are to protect the rights of the minority—not the majority. The majority does not want protection, because it does not do anything it does not want to do."

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DIVISION OF PUPIL PERSONNEL SERVICES
FRANCIS J. DALY, DIRECTOR
BUREAU OF HEALTH SERVICE
JOHN A. FORST M.D., CHIEF

October 26, 1954

Your letter of October 21, 1954 requesting definite information in dental care in two specific communities has been received.

The specific information you desire is herewith itemized in accordance with reports forwarded to us by the two communities.

Kingston

Enrollment	5403
Number of Pupils Inspected	5308
Number of Pupils with Defects	2209
Number of Pupils Under Treatment for Defects	1551

Newburgh

Enrollment	5119
Number of Pupils Inspected	4969
Number of Pupils with Defects	3139
Number of Pupils Under Treatment for Defects	2072

If further information is desired, feel free to ask, and we shall try to cooperate.

Sincerely yours


John A. Forst, M.D.

jaf/jsh

The ten year period of examination is over for the effects of fluoridated city water. Newburgh has 930 decayed teeth and 521 under treatment more than the 'control' city of Kingston, New York. 339 more pupils were inspected at Kingston than at Newburgh. The fluoridators of the nation have been announcing the reduction of cavities has been 57% in these pilot cities.

The New York report reveals children's increase of damaged or destroyed teeth about 33 1/3% over Kingston. ~~Fluoridation should be stopped at once the most vicious murder program ever known to man.~~

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