

MEMORANDUM OF LAW

DATE: August 29, 1995

TO: Milon Mills, Director, Water Utilities

FROM: City Attorney

SUBJECT: Assembly Bill 733, Proposed Amendment to Health and Safety Code Requiring Fluoridation of Public Water Systems

You asked our office to analyze Assembly Bill (AB) 733, which proposes to amend the California Health and Safety Code and require the fluoridation of public water systems. Of particular interest to you is whether AB 733 would preempt San Diego Municipal Code section 67.00. Attached is a memorandum by Joseph Sanchez, a legal intern in the City Attorney's Office, which reviews the issue.

Mr. Sanchez concludes that the fluoridation of public waters does not rise to the level of a statewide concern. The proposed legislation therefore would not preempt San Diego Municipal Code section 67.00. We have reviewed Mr. Sanchez's memorandum and adopt by reference his analysis and conclusion. We qualify this conclusion, however, by noting that there is no clear definition by statute or case law of what matters are considered a "statewide concern." Consequently, if the legislation is adopted and the City chooses not to fluoridate its drinking water, then the matter may have to be litigated in court to assert the City's interest in preserving San Diego Municipal Code section 67.00.

Given the uncertainty regarding whether the fluoridation of public waters is a matter of statewide concern, we recommend that your department work with the City's legislative analyst and lobbyist to amend AB 733 to allow cities, by popular vote, to decide whether they wish to fluoridate their water. Alternatively, the bill could be amended to allow cities which have already elected, by a popular vote, to not fluoridate their water to be exempt from the legislation. Such an amendment would preserve San Diego Municipal Code section 67.00. Finally, assuming the City does not prevail in achieving the above referenced amendments to the bill, or in asserting that Section 67.00 of the San Diego Municipal Code is not preempted, the City would not have to fluoridate its water unless the State were to appropriate sufficient funds to pay the City for such fluoridation.

JOHN W. WITT, City Attorney

By

Kelly J. Salt  
Deputy City Attorney

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Attachment

ML-95-61