

Sewers, Construction of. Streams, Pollution of Water. State Board of Health, Control of Over Water Courses Used for Domestic Purposes.

Section 1564, revised codes, provides that streams, lakes, etc., used as a source of water or ice supply, or for any domestic purposes, may not be polluted by the introduction of sewage, and that human excrement may not be introduced into such streams, etc. Before a city may use a stream as the outlet for its sewer system it must appear that such stream is not used for any domestic purpose.

Helena, Montana, October 25, 1909.

Dr. Thomas D. Tuttle,
Secretary, State Board of Health,
Helena, Montana.

Dear Sir:

I am in receipt of your letter of October 7, asking my official opinion as to the construction to be placed upon chapter 177, session laws of 1907.

The question contained in your letter resolves itself into a construction of section 1564, revised codes. This section prohibits the dumping of sewage, drainage, refuse, or polluting matter of any kind into any spring, pond, lake or stream used as a source of water or ice supply by a city, town or public institution, or water or ice company for domestic use, and also contains a clause restricting the introduction of human excrement into any such stream, spring, lake or pond, or upon the banks thereof, or into any feeders thereto.

It is my opinion that the sewage of the city of Missoula may not be introduced into the Missoula river if it shall appear that said stream is used for domestic purposes, or for making ice which may be applied to domestic use. However, if, as the officers of the city of Missoula say, the water is not used for domestic purposes, then the inhibition contained in section 1564 does not apply thereto.

I advise you that your board has power under this section to consider the future use that this stream may afford to residents along its banks, and also that you should consider, in dealing with this question, the fact that the stream is polluted by the introduction of poisonous substances above the city of Missoula, as the statute especially includes polluting matter which, either of itself or in connection with other matter, render the stream impure.

The burden of proof as to whether or not the stream is used at all for domestic purposes should rest upon the municipality, and in the event that any order is made by your board it should take notice of, and give warning to, the city of Missoula that in the event that the stream is hereafter used, if not at present, for domestic purposes, that in that event a proper disposition of the sewage must be found by the city.

Very truly yours,

ALBERT J. GALEN,

Attorney General.