

Water, Pollution of Source of Supply. Sewage, City Introducing Into Water Supply. River, as Outlet of Sewer System.

The city of Glasgow may introduce the sewage of said city into the waters of Milk river, as said waters are not used as a source of water supply by any city, town, or public institution or water or ice company, for domestic use.

Helena, Montana, May 16, 1910.

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

Dear Sir:—

I am in receipt of your favor of May 15th, 1910, wherein you state that the city of Glasgow makes application to the state board of health for permission to install a system of sewers with a proposed outlet directly into the Milk river. You state further that affidavits are filed with the board in considerable number which show that the waters of Milk river are not used below the town of Glasgow, by any city or town or public institution as a source of water supply, or by any water or ice company for domestic use. You state further, however, that numerous residents along the course of Milk river have filed protests against the discharge of sewage from the city of Glasgow into Milk river, alleging that they use those waters for domestic purposes. This use, however, it seems, is the use of individuals and families, and does not come within the use contemplated in Section 1564. It is my opinion that the prohibition contained in Section 1564 extends only to those springs, ponds, lakes, streams or other sources of water or ice supply which are used by cities, towns, public institutions or companies supplying water or ice.

This opinion is in conformity with an opinion addressed to you on October 25, 1909, when the question of sewer outlet at the city of Missoula was under consideration.

The only case in which the supreme court of this state has been called upon to interpret Sections 1559 to 1572, Revised Codes, which is the act contained in Chapter 177, Session Laws of 1907, is that of Miles City v. State Board of Health, an appeal by the state board of health from an order of the district judge allowing the city to dump its sewage directly into the Yellowstone river. In this case an agreed statement of facts was prepared showing that the water of the Yellowstone river

was used by the city of Glendive, an incorporated city situated below Miles City on the banks of the Yellowstone river. The supreme court held in this case that irrespective of the actual pollution of the water at the point of intake by the city of Glendive, the statute absolutely prohibited the dumping of sewage containing human excretia into the river at any point in the state of Montana when it appeared that the water was used as a source of water supply, and if the showing made by the residents convinces the board that the waters of Milk river are not used by any city or town or public institution, or water or ice company, then the case above referred to has no application to this question, and you are advised that there is no statutory enactment prohibiting the board of health from granting permission to install the proposed system in the city of Glasgow, if they see fit to do so, as, in my opinion, Chapter 177, Session Laws of 1907, does not cover the conditions presented in this case.

In this opinion, we, of course, do not consider the rights of riparian owners to have the water flow past their premises in its natural state of purity, as that is a matter with which your board is not concerned, but rather one for adjustment between those parties and the city by civil action.

Yours very truly,

ALBERT J. GALEN,

Attorney General.