

Opinion No. 25**Elections — Special Elections
Concerning Fluoridation of water
Supply — State Board of Health**

Held: The question of controlled fluoridation of public water supplies may be submitted by referendum to the people of a municipality.

July 5, 1955

Dr. G. D. Carlyle Thompson
Executive Officer
State Board of Health
Helena, Montana

Dear Dr. Thompson:

You have requested my opinion concerning the legality of an election submitting the question of controlled fluoridation of public water

supplies. You advise me that a petition has been filed in one municipality requesting such an election.

The general rule concerning elections is found in 18 Am. Jur. 243, where it is stated that there is no inherent right in the people to hold an election and there must be express statutory authority authorizing the holding of an election. The city council, town council, or city commission has the legislative power in municipal corporations and may pass all ordinances, orders and resolutions necessary for the government or management of the affairs of a city or town. However, the power to legislate on city affairs has been granted to the electors by the adoption of the initiative and referendum. Under Section 11-1104, R.C.M., 1497, an ordinance proposed in a petition, signed by 8 per cent of the legal voters of any city or town, must be considered by the council. If the council does not pass an ordinance on the subject proposed, then the ordinance proposed by the petition must be submitted to the people. Such a proposed ordinance must be submitted to the people at the next regular election unless, as is provided in Section 11-1105, R.C.M., 1947, a petition, signed by not less than 15 per cent of the electors, requests that the ordinance be submitted at a special election, then such an election must be called.

Any ordinance or resolution adopted by the council must be submitted to a vote of the people if a petition signed by 5 per cent of the qualified electors is filed with the clerk of the city or town not less than thirty days following the passage of the ordinance or resolution. (Section 11-1107, R.C.M., 1947.) Also, the city or town council has the authority to submit to the electors any ordinance passed by the city or town council under the provisions of Section 11-1109, R. C. M., 1947.

The proposal and adoption of ordinances by the people through the use of the initiative and referendum is limited to subjects which are properly considered by a legislative body. City problems which are administrative or executive in nature are not properly within the control of the people by use of the initiative

and referendum. In *State ex rel. Gerry v. Edwards*, 42 Mont. 135, 111 Pac. 734, it was stated:

"The several constitutional limitations upon the authority of the legislature over city affairs, the adoption of the initiative and referendum as applied to municipal legislation . . . indicate that it is the public policy of this state to confide to the citizens of municipalities the right of local self-control to the utmost extent compatible with an orderly system of state government. . ."

The above rule is stated in a more extended form in the case of *Denman v. Quin* (Tex. Civ. App.) 116 S. W. (2d) 783, where the court said:

"It is obvious that ordinances intended by the electorate to be subject to referendum are those which are legislative in character, as distinguished from those of an administrative or executive nature; legislative, as relates to subjects of a general, or permanent, character, as distinguished from those which are only transitory, or temporary, or routine, and therefore administrative or executive, in their purpose and effect. An ordinance originating or enacting a permanent law or laying down a rule of conduct or course of policy for the guidance of the citizens or their officers and agents is purely legislative in character, and referable, but an ordinance which simply puts into execution previously declared policies or previously enacted laws is administrative or executive in character, and not referable."

The fluoridation of the water of a city is of general concern to the people of the community and establishes a policy continuing in nature so that the inhabitants of the municipality would be directly affected by it.

It is therefore my opinion that the question of controlled fluoridation of public water supplies may be submitted by referendum to the people of a municipality.

Very truly yours,
ARNOLD H. OLSEN
Attorney General