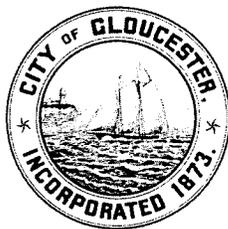


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CITY OF GLOUCESTER  
DEPARTMENT OF LAW

MEMORANDUM

TO: Dr. Richard Sagall, Chairman and Members of the Board of Health

FROM: Suzanne P. Egan, General Counsel <sup>SP</sup>

DATE: July 17, 2014

RE: Fluoridation of the Public Water Supply

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This is in response to your request for a legal opinion as to whether the Gloucester Board of Health has the authority to decrease or eliminate fluoride from the public water supply. Massachusetts General Law Chapter 111, Section 8C, provides that the State Department of Public Health may recommend to local boards of health methods that are advisable to reduce and limit dental disease. If the commissioner finds that the fluoride content of the public water supply is not at optimum level for dental health, he shall notify the local board of health. After the local board investigates the issue and determines that it's in the best interest of the inhabitants, the local board may order that the level of fluoride be increased. In this instance, the board of health is acting as an agent of the Department of Public Health and has the power to compel the city council to fund the fluoridation of the water supply.

Section 8C further provides that opponents to such an order to fluoridate the water supply may file a citizen petition signed by five percent of the registered voters seeking that a referendum question be placed on the ballot to determine whether the water supply should be fluoridated. If the consensus of the community is to eliminate fluoride then the city must follow the directive. There is no provision in the statute which authorizes the mayor, board of health or city council to eliminate fluoride from the system.

As the board's authority to increase or add fluoride to the water supply is concurrent with the Department of Public Health's determination that the fluoride level in the water supply poses a risk to public health, its authority to decrease or eliminate fluoride is also concurrent with the Department. The board of health does not act on the issue as an independent board or agency but only as an agent of the State and only after a recommendation or finding.

The Supreme Judicial Court in the Board of Health of North Adams v. Mayor of North Adams, 368 Mass. 554 (1975), noted that the statute confers the power on the State in concurrence with

the local board of health to order the increase in fluoridation. It provides a method to eliminate the fluoridation, through a citizen's petition, but it specifically does not give that authority to the mayor or the city council.

I would conclude that the statute also does not authorize the local board of health to unilaterally decrease or eliminate fluoride. Therefore, the only mechanism available to decrease or eliminate fluoride is through either a finding by the State that the fluoride level is excessive or by a ballot referendum mandating that the fluoride level be decreased or eliminated from the public water supply.