

1972 S.C. Op. Atty. Gen. 37 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3252, 1972 WL 20399

Office of the Attorney General

State of South Carolina

Opinion No. 3252

January 25, 1972

*1 The State Board of Health may not require by rule and regulation that flouride be added to the water supplies of the waterworks systems in the State.

TO: General Counsel
State Board of Health
Columbia, South Carolina

The South Carolina State Board of Health desires to promulgate a rule or regulation pursuant to the authority vested in it by Section 32–1202(b), South Carolina Code Annotated (1962). The Board wishes, by this rule or regulation, to make the addition of flouride to the water supplies of the waterworks systems of the State a mandatory requirement. Whether or not the Board has the authority to promulgate such a rule or regulation is the issue considered in this opinion.

The scope of the Board's authority, as granted by the South Carolina Legislature in Sections 32–1201, *et seq.*, of the South Carolina Code Annotated, is restricted to insuring the purity of water supplies. The addition of flouride to water supplies has no bearing on the purity of the water but is solely directed at the prevention of tooth decay. Since the flouride additive will not affect the purity of water, the Board, therefore, is without the authority to issue the rule or regulation that it proposes unless it obtains specific legislative authority. The proposed rule or regulation goes beyond the powers granted to the Board by the Legislature.

Under Section 32–1202, South Carolina Code Annotated, the Board has express authority to issue rules and regulations that it feels are necessary to implement the intent of the Legislature and fulfilling the purposes of the Act. The purpose and intent of the Act is clearly to protect the water standards of the State. To this end, the Board may promulgate such rules and regulations and establish such standards as it feels necessary.

The Board, however, may not legislate by issuing rules and regulations in areas in which it is without authority to act. Rules and regulations adopted pursuant to appropriate legislation can only implement the law and may not add to the law. [Banks v. Batesburg Hauling Co.](#), 202 S.C. 273, 24 S.E.2d 496; 2 Am.Jur.2d *Administrative Law* § 300 (1962). An agency with the authority to promulgate rules and regulations may only ‘fill up the details’ of the law and not ‘enact new laws in the nature of regulations to satisfy its own theory and its enforcement of the . . . laws of this State.’ [Heyward v. South Carolina Tax Commission](#), 240 S.C. 347, 126 S.E.2d 15. The rule proposed by the Board goes beyond the implementation of the law and does more than ‘fill up the details.’ It ‘oversteps the boundaries of interpretation’ of the statute under which the Board purports to be acting. 2 Am.Jur.2d, *supra*, at 126. The legislative intent is clear. The Board was given the authority to safeguard the purity of water supplies. It was not given the authority to require additives which it deems to be beneficial to the health of the people, of but which are not necessary or even remotely beneficial to the standards of purity to which the legislation is directed.

*2 Hubbard W. McDonald, Jr.
Assistant Attorney General

1972 S.C. Op. Atty. Gen. 37 (S.C.A.G.), 1972 S.C. Op. Atty. Gen. No. 3252, 1972 WL 20399