


**IN THE CIRCUIT COURT OF MARSHALL COUNTY, ALABAMA**

|                               |   |                             |
|-------------------------------|---|-----------------------------|
| ARAB THE CITY OF (ALABAMA),   | ) |                             |
| Plaintiff,                    | ) |                             |
|                               | ) |                             |
| V.                            | ) | Case No.: CV-2016-900062.00 |
|                               | ) |                             |
| WATER WORKS BOARD OF THE CITY | ) |                             |
| OF ARAB C/O MR. TED,          | ) |                             |
| Defendant.                    | ) |                             |

**ORDER GRANTING PRELIMINARY INJUNCTION**

On February 11, 2016, the City of Arab filed a motion for a preliminary injunction seeking an order to require the Arab Water Works to continue fluoridating the water supply of the City of Arab during the pendency of this lawsuit. After a hearing on March 8, 2016 and March 9, 2016, where both parties were present with their counsel, the Court having considering the testimony, evidence presented, and legal argument, and applying the four-part standard which a party must meet in order for a preliminary injunction to be issued, the Court finds as follows:

The Court heard ore tenus testimony from the Mayor of the City of Arab, Bob Joslin, regarding a resolution of permanent nature passed by the City of Arab in 1972 instructing the Water Works Board to fluoridate the City's water supply. The Water Works Board followed the resolution and did so for 43 years without objection, until some point around August of 2015, when the Water Works Board of the City of Arab unilaterally removed fluoride from the water supply without notice to the City Council or to the citizens of Arab. After unsuccessful efforts to have fluoride reintroduced into the water supply, the City filed this lawsuit.

The Court then heard ore tenus testimony from the Director of the Alabama

Department of Public Health, Dr. Robert Meador, from dentist Dr. Tom Willis, board certified pediatrician Dr. Don Jones, and board certified pediatric dentist, Dr. Steven Mitchell. All medical professionals in attendance were qualified as experts in their fields and each offered the opinion that systemic fluoride is important for the public health, and that removal of fluoride from the water supply would cause immediate, irreversible, irreparable harm – especially to children who need systemic fluoride as their teeth develop, elderly, and poor citizens served by the Water Works Board of the City of Arab. In addition, the Court notes that it found each of the experts to be credible and knowledgeable. It further accepts their collective testimony that the only reputable, reliable, and credible evidence on the issue of fluoridation of water is that it promotes public health. Based on the abundance of undisputed medical testimony on the issue of irreparable harm, the Court finds that irreparable harm would result if no injunction is issued. And finally on this issue, based on the medical evidence presented that ceasing systemic fluoridation through treatment of the public water supply would result in immediate irreversible harm to the same groups noted above, especially to children with developing teeth, the Court finds that there is no adequate remedy at law for the Plaintiff.

The Plaintiff presented Alabama Code § 11-45-1 and its 1972 Resolution (supported by its 2015 Resolution) to establish its authority to direct the Defendant to fluoridate Arab's water. The Defendant offered no evidence of its authority to remove fluoride over the objection of the City. The Defendant offered no evidence at all of the procedure, parliamentary or otherwise, that it followed in determining that fluoride should be removed. The Defendant also failed to offer any evidence of harm that would result if it is required to fluoridate the water supply during the pendency of this

litigation. To the contrary, the only evidence before the Court is that Defendant fluoridated the water for 43 years without any complaint or claim of hardship. And while the Defendant has presented no evidence of hardship, the City has shown through the testimony presented that immediate and irreparable harm will indeed occur if fluoride is not reintroduced into the city water system. Thus the Court finds that no hardship will be suffered by the Defendant by the granting of the injunction; certainly any hardship imposed on the defendant by the injunction will not unreasonably outweigh the benefit accruing to the plaintiff.

Based on the evidence offered and Alabama statutory and case law, the Court finds that the City is properly acting within the scope of its authority in seeking to enforce its own resolutions as they relate to protecting the public health, especially in light of the fact that the Water Works Board abided by the instruction in the resolution for 43 years with no objection and only now argues that it should not have to follow it. See Water & Wastewater Bd. of City of Madison v. City of Athens, 17 So. 3d 241, 245 (Ala. Civ. App. 2009) (holding “Despite the language in cases like Huffstutler and Cochran regarding the separate and independent nature of public corporations, our supreme court has also long held that, in at least some respects, a public corporation like the [water] Board is an agency of the municipality it serves.”); See also, Wetumpka v. Central Elmore Water Auth., 703 So. 2d 907 (Ala. 1997) (the Alabama Supreme Court holding “that a water works board organized and operating pursuant to §§ 11-50-230 through 11-50-241 is an agency of the municipality it serves”) (citing City of Montgomery v. Water Works and Sanitary Sewer Board of the City of Montgomery, 660 So.2d 588 (Ala. 1995)). Considering the 1972 resolution, the 43 year history of uninterrupted, unquestioned fluoridation of the water supply by the Defendant, and

based on the authority of the City under Alabama statutes including but not limited to § 11-45-1, Code of Alabama, the case law presented (including that cited above), and the evidence offered at the hearing, the Court finds that the Plaintiff has a reasonable chance of success on the merits.

Based on the Plaintiff having met all four elements required for the issuance of a preliminary injunction as detailed above, the Court hereby Orders as follows:

The Water Works Board of the City of Arab is to immediately resume the addition of fluoride to the water supply at the optimal level as recommended by the U.S. Department of Health and Human Services, currently 0.7 milligrams of fluoride per liter of water, and otherwise in accord with the same practices followed by the Board over the past 43 years prior to August, 2015, and is enjoined from ceasing the same until further orders of this Court; and

The City of Arab shall post a bond in the sum of \$50,000.00 (fifty thousand and 00/100 dollars), which the Court finds to be sufficient security.

Additionally, the Defendant's Motion to Dismiss is hereby denied. The Court instructs the Defendant to answer the Complaint within 30 days.

**DONE this 17<sup>th</sup> day of March, 2016.**

**/s/ TIM RILEY**  
**CIRCUIT JUDGE**