

DWH Brief in Opposition Exhibit 5

Erie Case Clipping

Fluoride issue might go to court
By ERICA ERWIN
erica.erwin@timesnews.com

The fluoride debate might spill from City Hall into the courtroom, but a lawyer for the city says the city's case is on slippery ground.

After nearly three hours of public comment and debate, City Council voted, 4-3, to send a letter to the Erie City Water Authority notifying the authority it may be breaking its lease by adding fluoride into the water system.

Under the authority's lease agreement with the city, it has 30 days to respond in writing to the letter from the city Solicitor's Office, and 60 days to correct any alleged violations of the lease before the city can take the authority to Erie County Common Pleas Court.

Council's decision was met with a round of applause from most of the nearly 100 people who attended the meeting. The vote was a victory for a group of vocal fluoride opponents who have, along with area dentists and other fluoride supporters, for months attended council meetings to make their case.

"I will continue to listen week after week to the same arguments, but the only way this is going to be solved is if we go to court," council President James N. Thompson said.

City Councilman Ian Murray, who sponsored the resolution, claimed the authority's lease requires it to operate the water system in the same manner and under the same standards that were in place in 1990, when the authority took over the system from the city.

Adding fluoride to the water, Murray said, violates the authority's lease. But some council members and Deputy City Solicitor Larry Meredith aren't so sure.

Meredith called the resolution an "exercise in futility" and said he isn't sure the authority is breaking its lease. Adding fluoride to the water, he said, could fall under the authority's rights included in the lease. Still, he said, he'll follow the vote and write the letter to the authority.

"I've expressed my opinion about the issue and cited the law," Meredith said. "That's all I can do. If City Council wants to do something contrary to the Solicitor's Office, that's their prerogative."

Filippi said he reviewed the lease and concurred with Meredith's opinion.

"This issue should have been resolved years ago. It's council's prerogative to go forward, but I think it's responsible to listen to what your legal staff is telling you," Filippi said. "To go down a legal path of sure defeat doesn't seem responsible, legally and fiscally."

Councilwoman Rubye Jenkins-Husband and Councilmen Joe Borgia and Melvin Witherspoon all voted against the resolution, questioning the wording of the lease and council's ability to take action against the autonomous authority. "I have to consult with my client as to the action (council has) taken," Water Authority attorney Timothy Sennett said after the vote. "It appears they're going to send a letter, and I assume it will have in it the basis for which we've allegedly breached the lease."

James Rudy, the authority's executive director, has said the only way the authority could violate its lease is if it defaulted on lease payments.

Council also voted, 5-2, to pass the final reading of an ordinance establishing a Safe Drinking Water Act in the city. The ordinance, which prohibits any person or water system from adding any chemical to a water supply for any other reason than to make the water safe, is clearly targeted at fluoride, Thompson said.

Meredith has already issued a written opinion that the ordinance is unenforceable because the authority is autonomous.

Murray said it was written to simply send a message to the authority that council disapproved of the plan to fluoridate in November, and that council's vote to send the matter to court would have more weight.

ERICA ERWIN can be reached at 870-1846 or by e-mail.