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SYLLABUS:

The village council of Sebring cannot, by passage of resolution, place the issue of fluoridation of drinking water on the ballot.

Columbus, Ohio, March 25, 1963

Hon. Clyde W. Osborne
Prosecuting Attorney
Mahoning County
Youngstown, Ohio

Dear Sir:

I have before me your request for my opinion which reads as follows:

“The Clerk of the Mahoning County Board of Elections desires an opinion on the following questions pertaining to submitting an issue of adding sodium fluoride to the drinking water in the Village of Sebring, Ohio.

“1. May the issue be placed on the ballot upon passage of a resolution by the Village Council?

“2. If the answer to this is yes, may the issue be placed on the primary ballot in May, 1963?”

Section 731.09, Revised Code, provides that the legislative power of each village shall be vested in and exercised by a legislative authority composed of six members. The provisions of Section 731.17, Revised Code, provide that the action of the legislative authority of a municipal corporation shall be by ordinance or resolution.

Initiative and referendum powers are reserved to the people of municipalities by Article II, Section 1 (F) of the Ohio Constitution, which states:

“The initiative and referendum powers are hereby reserved to the people of each municipality on all questions which such municipalities may now or hereafter be authorized by law to control by legislative action; such powers shall be exercised in the manner now or hereafter provided by law.”

Article XVIII, Section 3, of the Ohio Constitution, provides:

“Municipalities shall have authority to exercise all powers of local self-government and to adopt and enforce within their limits such local police, sanitary and other similar regulations, as are not in conflict with general laws.”

On the particular issue of fluoridation of water, the City of Cleveland was held to have such authority in *Kraus v. City of Cleveland, et al.*, 163 Ohio State 559.

The Legislature has provided the method by which ordinances and other measures can be proposed by initiative or referendum by enacting Sections 731.28 and 731.29, Revised Code. Section 731.28, Revised Code, states:

“Ordinances and other measures providing for the exercise of any powers of government granted by the constitution or delegated to any municipal corporation, by the general assembly, may be proposed by initiative petition. Such initiative petition must contain the signatures of not less than ten per cent of the number of electors who voted for governor at the next preceding general election for the office of governor in the municipal corporation.

“When a petition is filed with the city auditor or village clerk, signed by the required number of electors proposing an ordinance or other measure, such auditor or clerk shall, after ten days, certify the text of the proposed ordinance or measure to the board of elections. The auditor or clerk shall retain the petition.

“The board shall submit such proposed ordinance or measure for the approval or rejection of the electors of the municipal corporation at the next succeeding general election, occurring subsequent to ninety days after the certifying of such initiative petition to the board of elections. No ordinance or other measure proposed by initiative petition and approved by a majority of the electors voting upon the measure in such municipal corporation shall be subject to the veto of the mayor.”

Section 731.29, Revised Code, providing for referendum of ordinances and other measures, states:

“Any ordinance or other measure passed by the legislative authority of a municipal corporation shall be subject to the referendum except as provided by section 731.30 of the Revised Code. No ordinance or other meas-

ure shall go into effect until thirty days after it is filed with the mayor of a city or passed by the legislative authority in a village, except as provided by such section.

“When a petition, signed by ten per cent of the number of electors who voted for governor at the next preceding general election for the office of governor in the municipal corporation, is filed with the city auditor or village clerk within thirty days after any ordinance or other measure is filed with the mayor or passed by the legislative authority of a village, or in case the mayor has vetoed the ordinance or any measure and returned it to council, such petition may be filed within thirty days after the council has passed the ordinance or measure over his veto, ordering that such ordinance or measure be submitted to the electors of such municipal corporation for their approval or rejection, such auditor or clerk shall, after ten days, and not later than four p.m. of the ninetyeth before the day of election, certify the text of the ordinance or measure to the board of elections. The auditor or clerk shall retain the petition. The board shall submit the ordinance or measure to such electors, for their approval or rejection, at the next succeeding general election, occurring subsequent to ninety days after the certifying of such petition to the board of elections.

“No such ordinance or measure shall go into effect until approved by the majority of those voting upon it. Sections 731.28 to 731.41, inclusive, of the Revised Code, do not prevent a municipal corporation, after the passage of any ordinance or other measure, from proceeding at once to give any notice or make any publication required by such ordinance or other measure.”

The village of Sebring is operating under statutory authority and no other method or procedure for the ratification of or enactment of municipal legislation is provided for by statute. From the above cited constitutional and statutory provisions, it is my opinion that the village of Sebring can, by ordinance, provide for the fluoridation of drinking water. The only methods by which the village residents could vote upon the issue of fluoridation is by initiative or referendum petition. Therefore, in answer to your first question, it is my opinion and you are accordingly advised that the village council of Sebring cannot, by passage of resolution, place the issue of fluoridation of drinking water on the ballot.

Having arrived at this conclusion, your second question need not be answered.

Respectfully,
WILLIAM B. SAXBE
Attorney General