

SUPREME COURT OF NEW HAMPSHIRE

Balke v. City of Manchester

150 N.H. 69 (2003) · Decided September 30, 2003

SUMMARY

The New Hampshire Supreme Court held that RSA 485:14 requires a public hearing and voter approval in each municipality whose residents use water from a water system before fluoride may be introduced into that supply. The court rejected Manchester’s argument that approval was required only in Manchester, the municipality that owned and operated the Manchester Water Works. The court affirmed the trial court’s order, extending the compliance deadline to June 30, 2005.

CASE DETAILS

COURT	Supreme Court of New Hampshire
WRITING FOR THE COURT	Nadeau, J.; Brock, C.J.; Dalianis, J.; Duggan, J.
JURISDICTION	New Hampshire
DECIDED	September 30, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	The City of Manchester appealed from a superior court order granting the plaintiffs summary judgment in a declaratory judgment action concerning fluoridation of the Manchester Water Works water supply.
STANDARD OF REVIEW	De novo review of the question of statutory interpretation; the court stated that it is the final arbiter of legislative intent expressed in statutory language.
PRECEDENTIAL VALUE	Published opinion; precedential authority of the Supreme Court of New Hampshire.
PARTIES	City of Manchester v. Balke and other plaintiffs

TOPICS

- statutory interpretation
- plain meaning rule
- legislative intent
- municipal law
- public utilities

PRACTICE AREAS

- statutory interpretation
- municipal law
- public utilities
- health law

QUESTIONS PRESENTED

1. Whether RSA 485:14 requires a public hearing and voter approval in every municipality whose residents use water supplied by Manchester Water Works before fluorine may be introduced into that water supply.
2. Whether interpreting RSA 485:14 to require approval in each receiving municipality conflicts with the statutory scheme or produces absurd or unjust results.

HOLDINGS

1. RSA 485:14 requires a public hearing and referendum in each municipality in which residents use the water supplied by Manchester Water Works; approval solely by the municipality that owns and operates the water system is insufficient.
2. The possibility that a vote or failure to satisfy referendum prerequisites in one municipality could prevent fluoridation throughout the system does not authorize the court to depart from the clear statutory language; resolving those policy difficulties is the legislature's responsibility.

KEY QUOTATIONS

“Any municipality that has residents using water from MWW is a “municipality using said waters” within the meaning of RSA 485:14.” (at 73)

“We will not rewrite the statute; that is the province of the legislature.” (at 73)

FACTUAL BACKGROUND

Manchester Water Works, a department of the City of Manchester, supplied water to Manchester and to residents and businesses in several surrounding municipalities through direct retail connections and wholesale contracts. Manchester held a public hearing and conducted a 1999 referendum in which its voters approved fluoridation, but the surrounding municipalities held no comparable hearings or referendums. Manchester began adding hydrofluoridic acid to the water supply on December 19, 2000, after obtaining approval of its fluoridation plan from the New Hampshire Department of Environmental Services.

PROCEDURAL HISTORY

Residents of Manchester and five surrounding municipalities petitioned for declaratory and injunctive relief and damages, alleging that Manchester violated RSA 485:14 by fluoridating its water without public hearings and voter approval in each municipality receiving Manchester Water Works water. The superior court denied a preliminary injunction, then granted the plaintiffs' motion for summary judgment, ordered the city to cease fluoridation by April 2004 unless the legislature enacted a remedy or the surrounding towns approved fluoridation, and denied the city's motion for reconsideration. The Supreme Court of New Hampshire affirmed and extended the compliance deadline to June 30, 2005.

DISPOSITION

affirmed

REMAND INSTRUCTIONS

The court affirmed the trial court's order and extended the deadline for compliance with the cessation order to June 30, 2005.

CASES CITED

- In the Matter of Breault & Breault, 149 N.H. 359, 361
- Vogel v. Vogel, 137 N.H. 321, 322

Retrieved from lawtools.ai · <https://lawtools.ai/cases/state/new-hampshire-supreme-court-of-new-hampshire/2003/balke-v-city-of-manchester-o5jin7ls>