

Opinion No. 57-146

June 20, 1957

BY: OPINION OF FRED M. STANDLEY, Attorney General Fred M. Calkins, Jr.,
Assistant Attorney General

TO: Honorable Dave Martin, State Representative, Bloomfield, New Mexico

QUESTIONS

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A number of farm users have requested that the Bloomfield Irrigation District supply water for domestic use which is raw and untreated. Can the district, which will make only a service charge for delivering the water, establish complete immunity from prosecution on account of illness alleged to have been caused by the use of such water?

CONCLUSION

Yes.

OPINION

ANALYSIS

The Bloomfield Irrigation District has built a three and one-half mile pipeline and operates a reservoir from which the district will furnish water to the Village of Bloomfield. Some twenty-five farms along the pipeline route between the reservoir and the village treatment plant have applied for the use of water transmitted in the pipeline for domestic use, including water for their homes, gardens, lawns and flowers. The water, which is transmitted in the pipeline and which has been requested for use, would be raw and untreated, but certainly no worse than is presently being used for the same purpose but taken from an open canal owned by the district. A certain amount of the water adjudicated to each of these farms has been allotted to domestic use and the district is now apprehensive as to whether if illness should occur from drinking the water they might be liable for prosecution in the same manner as a public utility.

Liability against an instrumentality supplying water to householders for domestic use for a consideration has been based on statutory law, tort or contract. Certain suppliers of water such as municipal contracts are often regulated by statutory law. A valid contract may be entered into between the supplier and the user whereby the supplier will expressly warrant that he will provide water which is fit for human consumption. Liability may also result where there is no express contract from an implied warranty between the seller and the user when the seller holds himself out to be one in the business of

supplying drinking water and water used for other domestic purposes. There are also cases where a water supplier has been held liable for negligence in supplying water which is unfit for human consumption.

Turning to the instant case, it is apparent that the Bloomfield Irrigation District is an organization which has as its primary purpose the supplying of irrigation water. Our Supreme Court in *Davy v. McNeill*, 31 N.M. 7, 240 P. 482, pointed out that an irrigation district is not a municipal corporation and hence it is our opinion that any statutory law concerning the duty of a municipality to supply drinking water fit for human consumption does not apply.

Turning to our possible grounds upon which liability can be predicated, we believe that such could be avoided by the use of a contract by the irrigation district and the user in which it is expressly stated that the water to be used is raw and untreated, unfit for human consumption and that the irrigation district will assume no liability or obligations due to illness alleged to have been caused by the use of such water.

As stated above, it is our feeling that the primary purpose of the irrigation district is to supply users with irrigation water and if the Bloomfield Irrigation District supplies water from its pipeline for domestic use under the terms and stipulations as outlined in this opinion complete immunity from prosecution could be established.