

		<b>West Virginia Department of Health and Human Resources</b>			
		<b>MANUAL OF ENVIRONMENTAL HEALTH PROCEDURES</b>			
Section	Waste Water	Date	April 15, 1983	Procedure #	WW-5
Subject	Attorney General's Opinion - Inspection of Small Sewage Treatment Systems			Page	1 of 1

Attached hereto is a copy of a letter sent to the Honorable James E. Roark, Kanawha County Prosecuting Attorney, from Homer A. Speaker, Assistant Attorney General, concerning the legal obligation of local health departments to inspect small sewage treatment plants operating under permits issued by the State Director of Health. Assistant Attorney General Speaker's opinion is quite clear in that local health officers have the authority and legal obligation to inspect small sewage treatment plants; that funds for such inspection programs would be from the general budgets of the local health departments; and that the local health departments are to rely upon the local prosecuting attorneys for subsequent enforcement action where indicated.

Questions concerning this memorandum should be directed to Barb Taylor, Director, Office of Environmental Health Services, 1 Davis Square, Suite 200 Charleston, WV 25301-1798, telephone: (304) 558-2981.

#### References

#### History

#### Attachments

[March 7, 1983, letter from Asst. Attorney General Homer A. Speaker](#)



STATE OF WEST VIRGINIA  
OFFICE OF THE ATTORNEY GENERAL  
CHARLESTON 25308

CHAUNCEY H. BROWNING, JR.  
ATTORNEY GENERAL

March 7, 1983

The Honorable James E. Roark  
Prosecuting Attorney  
Kanawha County Courthouse  
Charleston, West Virginia 25301

Dear Mr. Roark:

This office has received through you a request for an Attorney General's opinion from the Kanawha Charleston Health Department. In his letter asking you to request an opinion, Dr. Page Seekford, Director of the Kanawha Charleston Health Department, poses four questions pertaining to the inspection by his department of small package sewage treatment plants in Kanawha County. These questions will be discussed in the order set out in Dr. Seekford's letter of December 10, 1982. The first question reads as follows:

"1. Whether or not the Kanawha County Health Officer has a legal obligation to inspect small package sewage treatment plants which have been licensed by the West Virginia State Health Department?"

Yes. The Kanawha County Health Department is legally obligated to inspect small package sewage treatment plants licensed by the State Health Department.

Chapter 16, Article 1, Section 9 of the West Virginia Code of 1931, as amended, forbids the installation of any method or system of sewage treatment without first obtaining a permit from the State Director of Health or his authorized representative. These systems are to be installed in accordance with plans, specifications and guidelines issued by the State Director or in a manner approved in writing by the Director or his authorized representative. Code 16-2-1 requires county boards of health to exercise all the powers and enforce all the rules and regulations of the West Virginia Board of Health to the extent that the rules and regulations are applicable to the county. Code 16-2A-3 requires that county or municipal boards of health created pursuant to that article:

"It shall direct, supervise, and control all matters relating to the general health and sanitation in their respective counties or municipalities, and shall possess and exercise such power in relation

thereto as may be exercised and is possessed by the state board of health or director \* \* \*." (Emphasis supplied.)

Code 16-2A-3 further states:

"It shall be the duty of such local boards of health to protect the general health and supervise and control the sanitation of their respective counties and municipalities; to enforce the laws of this State pertaining to public health, and the rules and regulations of the state board of health, insofar as they are applicable to such counties or municipalities \* \* \* ." (Emphasis supplied.)

Also, Section 5.1 of the State Health Department Small Sewage and Excreta Disposal Systems Regulations, adopted by the State Board of Health and effective as of February 1, 1975, requires the State Health Director to make or cause to be made as many inspections of the construction, installation or operation of small sewage disposal systems as are necessary to determine if such systems comply with the regulations.

Finally, Code 16-2A-5 states that for county health officers appointed by a local board of health created pursuant to that article:

"[H]e [county or municipal health officer] shall administer the provisions of this article, all other laws of this State relating to public health and applicable to his county or municipality, and the rules, regulations and orders \* \* \* of the state board of health, so far as such rules, regulations and orders are applicable to his county or municipality."

State law requires inspections of small sewage and excreta disposal systems. State law also makes it clear that county and municipal boards of health are responsible for general health care and sanitation in their respective jurisdictions. State law is clear in that county and municipal boards of health shall have the duty to enforce State Health Board regulations in their respective jurisdictions. Thus, it is the opinion of this office that county and municipal health departments have a legal obligation to inspect small package sewage treatment plants licensed or permitted by the State Health Department.

The second question reads:

"2. Does the Kanawha County Health Officer, appointed under Chapter 16-3-2 [sic] of the State Code have the legal authority to inspect small package sewage treatment plants licensed by the State Health Department?"

Yes. For the reasons cited in the answer to question one, this office is of the opinion that county health officers have the legal authority to inspect small package sewage treatment plants licensed by the State Health Department.

The third question reads as follows:

"3. If the answer is affirmative, should not the county health department receive some of the money paid to the State Health Department during the small package sewage treatment plant licensing procedure?"

We assume that the question is asking for our opinion as to whether or not the State Health Department has a legal obligation to pay a portion of its licensing revenues to county health departments. We, of course, are not permitted to comment on whether the State Health Department "should" reimburse the county as a matter of fairness or policy. Our examination of State law found no requirement that the State Health Department pay local health departments for inspecting State licensed package plants. In fact, from this office's review of pertinent statutes, it seems the intent of the Legislature is for local funding of local operations.

Code 16-2-2 gives county commissions and local authorities the power and authority to levy taxes to pay a local health officer and the costs of his administration. A cost of his administration would be fulfilling statutory obligations which include the enforcement of all State health laws, rules and regulations. Code 16-2-3 authorizes the State Health Department to pay to local or county health units which are "cooperating" with each other such funds as may be available to the State Health Department for such a purpose. The State Health Department is not required to do this but may if it so desires. Code 16-2-4 and Code 16-2A-8 provide for the reimbursement by a county or municipality to the State Health Director of expenses incurred by him if and when he supplants a local health officer. Finally, Code 16-2A-6 authorizes the levying of taxes for local health departments created pursuant to Code, Chapter 16, Article 2A. Code 16-2A-6 also provides for payments to local health departments from the State. But again, it does not require such payments. It is, therefore, the opinion of this office that the State Health Department has no legal obligation or duty to give

local health departments part of the monies the State receives during the licensing of small package plants.

The final question reads:

"4. Also, if the answer is affirmative, do we pursue correction by enforcement procedures through the Prosecuting Attorney's Office or through the Attorney General's Office?"

Correction should be pursued through the Prosecuting Attorney's Office. Code 7-2-4 places a duty on the county prosecuting attorney to attend to criminal and civil matters in his county. Indeed, as the Attorney General has no criminal prosecuting powers, these cases are solely within the authority of the county prosecutor. The Attorney General may institute and prosecute civil matters but only on behalf of the State. See, Code 5-3-1 et seq. It is our opinion, therefore, that county health departments go to county prosecutors to pursue enforcement action, criminal or civil, against persons who violate State health laws, rules and regulations.

We summarize our conclusions as follows:

1. County health officers have both a legal obligation and the authority to inspect small package sewage treatment plants licensed by the State Health Department.
2. There is no statutory requirement that the State Health Department pay to local health departments any portion of the money the State receives during the small sewage package treatment plant licensing process.
3. County health departments must seek correction and enforcement assistance from county prosecuting attorneys.

We trust this opinion answers your inquiry.

Very truly yours,

CHAUNCEY H. BROWNING  
Attorney General

By

*Homer A. Speaker* — Assistant  
HOMER A. SPEAKER

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