

**OPINION
43-115**

May 13, 1943(OPINION)

WATER CONSERVATION COMMISSION

RE: Artesian Wells

Your inquiry of May 10th relative to the status of state control of underground water was referred to the undersigned for attention.

Section 1 of Chapter 256 Session Laws of 1939, which is the State Water Conservation Act of 1939, states the purpose of the act and specifically refers to subsurface waters. It then goes on to state that the State Water Conservation Commission is the agency of the state empowered to regulate, supervise, control, etc. any system of works involving the aforesaid subject matter.

We do, however, have a special act governing artesian wells. The sections pertaining to artesian wells are Sections 2790b1 to 2790b8 inclusive of the Supplement. Section 2790b7 was amended by Chapter 88 Session Laws of 1927 and reads as follows:

"Enforcement of this act shall be in the charge of the State Geologist or his deputy, who shall be a specialist, skilled in the control of flow and pressure, and of methods of construction of artesian wells. An appeal from the geologist's ruling may be had, if made within five days to a board of arbitration consisting of the State Engineer and Assistant State Geologist, who shall name a disinterested person as a third arbitrator, and such board shall review the matter and render final decision thereon."

In Section 3790b6 in referring to the State Geologist the following language is found:

"He shall secure the enforcement of all laws pertaining to artesian and phreatic waters of the state."

The provisions of the sections above referred to relative to artesian wells, being a special act and specifically placing the enforcement thereof in the hands of the State Geologist would indicate that it was the intention of the Legislature that he alone should have control over artesian wells.

I, therefore, believe that as far as artesian wells are concerned the State Engineer is without authority to regulate and control the same.

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