Recent Legislation

MUNICIPAL CORPORATIONS—TOWNS GIVEN RIGHT TO SUE FOR DAMAGES FOR POLLUTION OF WATER SUPPLY

The Oklahoma Legislature, in an act approved on April 6, 1927, made it unlawful for any person to pollute with salt water, crude oil, sulphur water, or the refuse or products of any well or mine any stream, pond, spring, lake or other water reservoir used as a water supply by an incorporated city or town. Section 2 of this act reads:

> Any incorporated city or town shall have a right of action for damages resulting from such pollution of its water supply, and the measure of damages shall be the amount which will compensate for the detriment caused thereby, whether it could have been anticipated or not. Where such pollution is continued for a period of six months or more, the injury shall be regarded as permanent. Session Laws of Oklahoma, 1927, 160.

The right of a municipality to prevent pollution of its water supply seems to be well established. This right is usually exercised by a suit for an injunction. *Mayor of Baltimore v. Warren Mfg. Co.,* 59 Md. 96; *City of Battle Creek v. Coguac Resort,* 181 Mich. 241, 148 N. W. 441; *Board of Health v. Diamond Paper Co.,* 64 N. J. Eq. 793, 53 Atl. 1125; *Durham v. Eno Cotton Mills,* 141 N. C. 615, 61 Atl. 811; *Newton v. City of Groesbeck,* 299 S. W. (Tex.) 518; *Springville v. Fullmer,* 7 Utah 450, 27 Pac. 577. As against the municipality the right to pollute the water supply cannot become a prescriptive right. *Martin v. Gleason,* 139 Mass. 183, 29 N. E. 664; *Town of Shelby v. Cleveland Power Co.,* 155 N. E. 196, 71 S. E. 218.

A great many states have found it advisable to legislate against such pollution. Since the purity of the municipal drinking water is closely related to the good health of the community, statutes or ordinances which prohibit the pollution of streams of water from which communities draw their supply are upheld as valid exercises of the police power. *Lewis v. Stein,* 16 Ala. 214; *Sprague v. Dorr,* 185 Mass. 10, 69 N. E. 344; *State v. Griffin,* 69 N. H. 1, 39 Atl. 260; *Brown v. City of Cle Elum,* 255 Pac. 961. The Oklahoma statute in this respect is not unusual, therefore. But it has a unique feature in that it gives to the town injured a right of action for damages. Ordinarily such statutes either declare such pollution a misdemeanor with a stipulated penalty (*People v. Borda,* 105 Cal. 636, 38 Pac. 1110; *City of Durango v. Chapman,* 27 Colo. 169, 60 Pac. 635; *Salt Lake City v. Young,* 45 Utah 349, 145 Pac. 1047) or specifically grant to the municipality the right to injunctive relief (*Board of Health v. Vineland,* 72 N. J. Eq. 289, 65

Atl. 174). The idea of the town's suing for damages has no precedent in either the common law or the statutory law on this subject.

The wisdom of this provision is debatable. The difficulty in determining the extent of the injury is apparent. Is there any satisfactory way in which a municipality can compute "the amount which will compensate for the detriment" caused by the use of the impure waters? After all, what concerns the community is that it be furnished with pure, undefiled drinking water, and money damages are certainly a poor substitute. A statute prescribing prosecution with a fine and possible imprisonment for pollution of a stream would have a direct tendency toward discouraging such pollution. It is doubtful if a statute giving the injured town a right of action for damages can produce a like result, and a recovery under the Oklahoma statute will not in itself prevent a continuance of the acts of pollution, although, of course, the statutory remedy is not exclusive. F. A. E., '28.