

# Fluoridation/Public Water Authority: Arkansas Court of Appeals Addresses Applicability of Statutory Mandate



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04/30/2020

The Arkansas Court of Appeals (“Court”) addressed in a March 18th Opinion a challenge to the application of Arkansas Code Annotated Section 20-7-136 (Act 197). See 2020 Ark. App. 180.

Act 197 provides that:

“[t]he company, corporation, municipality, county, government agency, or other entity that owns or controls a water system shall control the quantity of fluoride in the water so as to maintain a fluoride content established by the Department of Health.”

The Ozark Mountain Regional Public Water Authority of the State of Arkansas (“Ozark”) challenged an Arkansas State Board of Health (“Board”) decision on two bases. They included:

- Act 197 did not apply to Ozark
- Act 197 was unconstitutionally vague

The Arkansas Department of Health (“Department”) issued an Order and Notice of Hearing to Ozark seeking a penalty for its failure to implement a fluoridation program as required by Act 197.

Ozark argued that Act 197 did not apply to it because it did not constitute a “water system” under Act 197. It further argued to the Department that Act 197 is vague with respect to “terminology.” As a result, it was stated to be unconstitutional as applied to Ozark.

Department personnel testified that over 21,000 individuals rely on Ozark for their water. It was further stated that:

Ozark sells treated water to eighteen separate entities and that those entities then sell the water to over 21,000 customers.

The testimony included a description of the water industry term “parent system” or “primary system” as referring to a seller and the term “consecutive system” referring to a purchaser.

Ozark’s Chairman responded that it buys its water through the United States Army Corps of Engineers. Further, he stated that the water was not treated before Ozark received it. The water was sold to 18 different individual water systems. None of the individual systems were stated to serve a population of more than 5,000.

The Board rejected these arguments. The decision was appealed to the Circuit Court. The Attorney General intervened. The Circuit Court subsequently upheld the Board’s decision.

Ozark appealed the Circuit Court's decision to the Court which initially stated that its review was limited in scope. It also noted that it must focus on the decision of the administrative agency (as opposed to the Circuit Court). In addition, the better ability of the specialized administrative agencies, through experience and more flexible procedures to address the legal issues affecting them, was referenced as a rationale for limiting the scope of judicial review.

The Court first addressed the argument that Act 197 was not applicable to Ozark. Ozark argued that its system is not a parent system, consecutive system, or other system. This was based on its belief that if the Arkansas General Assembly had intended to include "wholesale systems," it would have placed the term within the definition of water system.

The Court reviewed the principles of statutory interpretation and found that the relevant language of Act 197 was plain and ambiguous. It stated that the statute defines water system as:

. . . "a facility including without limitation a parent system, consecutive system, or other system."  
(Emphasis added.)

Therefore, the Court held that Act 197 includes all facilities regardless of whether they are a parent, consecutive, or wholesale system as long as they hold, treat, and supply water directly or through a consecutive system or consecutive systems to 5,000 persons or more. The statute was held to apply to Ozark.

In addressing the constitutional argument, the Court reiterated that the party challenging the statute has the burden of proving that the act is unconstitutional. Regardless, the Court did not rule on the constitutional argument because the Circuit Court did not address it. This was the case regardless of whether the Board had held Act 197 constitutional. The Court decided the decision holding that the failure to obtain a ruling from a lower court precludes appellate jurisdiction.

A copy of the Opinion can be downloaded [here](#).