

## Opinion No. 38-1898

March 2, 1938

**BY:** FRANK H. PATTON, Attorney General

**TO:** Mr. David W. Carmody District Attorney Santa Fe, New Mexico

{\*215} I have your letter of February 28th, together with copy of letter from Mr. Paul S. Fox, Public Health Engineer, regarding the pollution of water of Las Animas River and failure to install proper sewerage treatment plant by the City of Durango in Colorado.

After outlining the number of facts, Mr. Fox states that a feeling persists in San Juan County that action should be taken against the City of Durango compelling the construction of a sewerage treatment plant and he desires information in regard to procedure to be followed in such case. It is my belief that no action to compel the City of Durango to construct such a plant could be maintained.

On the other hand, there is a possibility that a suit by way of injunction might perhaps be maintained against the City of Durango to restrain the continuance of a nuisance.

However, such a suit would have to be filed in the Federal Court in the proper district of the State of Colorado. If such a suit is filed by an individual it might be required that damages must be shown in order for the plaintiff to acquire the necessary standing in court.

It occurs to me that the proper party to such an action would be the City of Aztec or the City of Farmington, or perhaps both jointly, such municipalities being represented by their city attorneys.

Other than by way of a diplomatic relationship, the Public Health Department of New Mexico would have no jurisdiction or powers outside of the geographical limits of the State of New Mexico, and I do not believe that department should be made a party to the lawsuit.

As above stated, I believe initial action should be taken by either the Town of Aztec, or the Town of Farmington.