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Applying Watering Bans to Private Well Users

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- The issue:
 - Can Municipalities control withdrawals by private well users from the aquifer it uses for the municipal water system?
 - And, what if there is no municipal water system?



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The Proposed NWPA Ordinance

The provisions of this section shall apply to
... property ... located with the municipal boundaries ...
and uses water other than municipal water that is
supplied by the same aquifers as the municipal water
supply.



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■ Applicable laws and regulations:

- The Proposed NWPA Ordinance
- Illinois Statutory References
- Illinois Case Law Basic Concepts



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■ Illinois Statutory References

- The Illinois Municipal Code (65 ILCS 5/1-9-1 (West 2002)) states that the "provisions of this Code shall be cumulative in effect."
- 65 ILCS 5/11-125-1 "the corporate authorities in each city and village may (1) provide for a supply of water by the boring of artesian wells, or by the digging, construction, or regulation of wells, pumps, cisterns, reservoirs, or waterworks."



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■ Illinois Statutory References

- 65 ILCS 5/11-139-8 provides municipalities with the power to:
- "(1) make, enact, and enforce **all needful rules and regulations** for the acquisition, construction, extension, improvement, management, and maintenance of the combined waterworks and sewerage system of the municipality and for the use thereof, (2) make, enact, and enforce all needful **rules, regulations, and ordinances** for the care and protection of such a system, which may be conducive to the **preservation of the public health**, comfort, and convenience and to rendering **the water supply of the municipality pure** and the sewerage harmless insofar as it is reasonably possible to do so, and (3) charge the inhabitants thereof a reasonable compensation for the use and service of the combined waterworks and sewerage system and to establish rates for that purpose." (Emphasis added.)



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■ Illinois Case Law Basic Concepts

- In Illinois, the authority for the passage of an ordinance need not be wholly derived from a single grant of power by the legislature, but may be derived from several different grants of power.
- Each part or section of a legislative act must be considered in connection with every other part or section, and not alone, in determining the purpose or intent of the legislature.
- **Dillon's Rule:** Non-Home Rule communities may only exercise those powers which are 1) granted in express words, 2) those necessarily implied in or incidental to the express words, and 3) those essential to the declared objects and purposes of the corporation, -- not simply convenient, but indispensable. *Huesing v. City of Rock Island*, 128 Ill 465 (----)



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- Analysis: *The Village of Algonquin vs. Tiedel*, 345 Ill. App. 3d 229 (2nd Dist. 2003).
 - Defendants were charged with refusing to tap on to the water system even though Village ordinance required doing so. They asserted as a defense, that the Village had no authority to require tap-on and as such the ordinance was invalid and unenforceable.
 - The defendants essentially advanced arguments based on privacy rights and the general right to be free from government action.
 - Court rejected these concepts and specifically addressed regulation of water by municipalities in Illinois



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- Analysis: *The Village of Algonquin vs. Tiedel*, 345 Ill. App. 3d 229 (2nd Dist. 2003).
 - While the Algonquin case addressed water tap on requirements, the broader logic of the Algonquin Case is applicable to the question of whether a municipality, within its borders, may regulate withdrawals from the aquifer it uses to supply water. The case stands for several propositions that affect municipalities:



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- Analysis: *The Village of Algonquin vs. Tiedel*, 345 Ill. App. 3d 229 (2nd Dist. 2003).
 - 1) Although Algonquin is Home Rule (30K), the case did not rest on Home Rule Powers, but on powers granted to all municipalities in the municipal code. The terms “Home Rule” are never mentioned in the case.
 - 2) Village’s are tasked with regulating the water supply as doing so is “a basic and legitimate governmental activity.” (Dillon’s rule 1 and 3)
 - 3) Protecting the water supply is justified because the “danger is significant” and “pure water is a precondition for human health” (Dillon’s Rule 3)



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 - 4) Municipalities are authorized and “must” plan ahead, and therefore plan to avoid a crisis.
 - 5) When the relevant sections of the legislative act are read together, it has the cumulative effect of granting municipalities, including the Village, the power to both provide and require connection to municipal water systems. (Dillon’s Rule 1)
 - 6) The express grant of power to municipalities includes: a) rules, regulations, and ordinances for the **care and protection** of such a system b) **preservation** of the public health and c) rendering the **water supply of the municipality pure**. (Dillon’s Rule 1)



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- Analysis: *The Village of Algonquin vs. Tiedel*, 345 Ill. App. 3d 229 (2nd Dist. 2003).
 - Based on the above, we are of the opinion that a rational basis exists for concluding that **preserving the very existence of the water supply** (by limiting withdrawals) is a basic element of preservation for the public health and protecting the system.
 - As such, rules regulating use (i.e. withdrawals) of, and from, the public water supply for property not hooked into the system, but within the regulatory jurisdiction of the municipality appear to be authorized by Illinois law. Dillon's rule does not bar this regulation.



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- Analysis: *The Village of Algonquin vs. Tiedel*, 345 Ill. App. 3d 229 (2nd Dist. 2003).
 - Related Questions that are not addressed by this case:
 - 1) Regulating withdrawals by persons (or other communities) outside of the jurisdiction of the municipality in question. (Likely Answer: Municipality is not authorized to regulate this)
 - 2) Withdrawals from a **different aquifer (not used by municipality)** by a property inside the municipality. (Likely Answer: Municipality is not authorized to regulate this, based on the logic of the case)



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- Analysis: *The Village of Algonquin vs. Tiedel*, 345 Ill. App. 3d 229 (2nd Dist. 2003).
 - Related Questions that are not addressed by this case:
 - 3) Regulation by a community that does not have a public water system . (Likely Answer: Municipality is not authorized to regulate this, based on the logic of the case)
 - 4) Regulation by a municipality that has a small system that serves some portion of the municipality, but not all. (Likely Answer: This is the most difficult of the questions. A “line” will have to be drawn regarding when the interest of the municipality in regulating the system become pervasive enough to justify the application of logic of the Algonquin case to a given municipally operated system.



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- Analysis: *The Village of Algonquin vs. Tiedel*, 345 Ill. App. 3d 229 (2nd Dist. 2003).
 - Related Questions that are not addressed by this case:
 - 5) Regulation by a County (Likely Answer: The basis of the Algonquin decision is specific to municipal law. It seems unlikely that its logic could be applied to a countywide ordinance.



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- Final Thoughts:
 - The NWPA Ordinance is specifically tailored to the situation where a municipality has a municipal water system. As such, the Algonquin case supports its use in situations where 1) A municipality has a municipal water system and 2) has well water users inside municipal boundaries who also tap into the same aquifer as the municipal system.
 - In cases where the above facts are true, adoption of all parts of the NWPA ordinance should be encouraged.
 - In cases where the above facts are not true, Section C(1)(b) of the ordinance can be deleted.



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■ Questions?



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