



COMMONWEALTH OF KENTUCKY  
**PUBLIC SERVICE COMMISSION**  
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Representative Joseph Meyer  
House of Representatives  
Capitol Building  
Frankfort, Kentucky 40601

Dear Representative Meyer:

At our meeting of January 20, 1988, we discussed the regulation, by the Public Service Commission, of sanitation districts organized pursuant to KRS Chapter 220. You posed several questions relating to the management and operation of sanitation districts. We have attempted to answer your questions by reference to KRS Chapter 220. Please understand that the Kentucky Public Service Commission has no direct responsibility for enforcing provisions of KRS Chapter 220. Furthermore, the Commission's authority over sanitation districts has been greatly limited by two court decisions within the last year. The opinions are included with this letter. We hope these responses are of some assistance.

1. Are sanitation districts organized pursuant to KRS Chapter 220 permitted to annex service areas that are not contiguous to the existing district?

The procedures for establishing sanitation districts are contained within KRS 220.010 through 220.130. Sixty percent of the freeholders within the limits of the territory proposed to be organized into a district must sign a petition with the Commissioner of Sanitation Districts (the Secretary of the Natural Resources and Environmental Protection Cabinet) requesting that a district be established. KRS 220.040. KRS 220.080 provides the framework for boundary changes. It makes no specific reference to noncontiguous annexations. However, construction subdistricts established pursuant to KRS 220.553 may be noncontiguous. So, reference to the construction subdistrict portion of the statute may be helpful. With reference to the construction of a headquarters building outside the boundaries of the district, KRS 220.130 provides that "the office of the district shall be located within the corporate limits of the district if practicable." (emphasis supplied). Note

that we are unable to find specific reference within KRS Chapter 220 to the power of a district to "annex" territories outside the district. Reference to annexation of a district by a city is made at KRS 220.530.

It appears that sanitation districts are clearly authorized to provide sewer service outside the district, KRS 220.285, and to construct facilities to provide such service. This is apparently authorized by KRS 220.030(4) which appears to grant broad power "to do all other things necessary for the fulfillment of the purposes of KRS 220.010 to 220.520." Also, as previously mentioned, KRS 220.533 permits construction outside the sanitation district boundaries.

2. May a sanitation district spend district funds outside the district?

See No. 1 above. We find no statutory restriction that would prevent a district from spending money on facilities outside the district, if such expenditures were consistent with the limitations described supra.

3. Who enforces discharge requirements when the discharger is located outside the District, but is served by the District?

We have discussed this with Art Williams, senior attorney with the Cabinet for Natural Resources and Environmental Protection (phone: 5576). He advises that:

(1) The Sanitation District is the KPDES permittee and thus is responsible for seeing that the discharge standards are met. If they do not, they are subject to enforcement action by the Cabinet for Natural Resources and Environmental Protection. He offered the opinion that this would apply to situations where the transmission line is not owned by the district. However, you should talk with him about the particulars of any contract situation.

(2) The district can enforce pretreatment program requirements against those who are discharging into the supply or waste stream which must be treated at its facilities.

4. Is the sanitation district responsible for maintaining sewers owned by cities within the district?

Governing bodies of second and third class cities may determine by ordinance whether such cities are to be included within a district. KRS 220.080(3). Such cities may bind themselves to pay for charges for district services furnished within the city. In first class cities the permission must be provided by the Board of Aldermen. KRS 220.285. KRS 220.285 grants the power to provide

service outside the sanitation district. Maintenance of facilities owned by cities within the district would appear to be a matter of contract.

5. How has Sanitation District No. 1 of Campbell and Kenton Counties accumulated approximately \$30 million in reserve accounts when annual rates produce approximately \$7.5 million?

According to the 1986 Annual Report, Sanitation District No. 1 of Campbell and Kenton Counties reported net income of \$815,158 inclusive of depreciation expense of \$2,075,532. However, when depreciation expense is added back the District has a net cash flow of \$2,890,690, which would be available for investment in the reserve accounts. The bond ordinance requires that the interest earned from the reserve accounts be reinvested and is not available to either current operations or as a consideration in determination of rates. Thus, over an extended period of time the investment of the net cash flow and reinvestment of interest could cause the buildup of the reserve accounts.

6. If the reserve funds were used for maintenance, how would rates be affected?

As discussed earlier the bond ordinance currently restricts the use of the reserve accounts and the associated interest. Without knowing either the maintenance expenditures of each municipality or the rates they are currently charging the customers for recovering those costs it would be difficult to express a definite opinion on how overall rates would be affected. However, considering the magnitude of the reserve accounts and the current payment of two bills by the customers, one to the district and one to the municipality, it would be our opinion that the overall change in rates would be minimal if any. However, with respect to rates generally, a less restrictive bond ordinance could lead to reduced revenue requirements, and possibly lower rates, to the extent that interest accruing on the reserves would be reflected in the District's income statement.

7. How may a sanitation district be compelled to spend, for maintenance or otherwise, funds currently held in the depreciation account?

KRS 220.460 provides that the funds accumulated in the depreciation account shall be expended in balancing the depreciation in the works of the district or in making new construction, extensions or additions. The Board of Directors may invest the funds, or pay for construction as authorized by KRS 220.460. We direct your attention to KRS 220.035, which gives the appropriate fiscal courts the power to review and approve certain district

actions and expenditures. Except for the possibilities that this portion of the statute may suggest, we see no other method that could interfere with the District Board's authority to control the reserve funds. Commission attempts to prescribe uses for reserve funds have been judicially restrained.

8. May a sanitation district charge a different rate for customers served outside the boundaries of the district?

KRS 220.285, discussed supra, gives the Board of Directors of a sanitation district the power to make contracts to provide for collection disposal and treatment of sewage produced outside of the district. This power to contract could naturally lead to varying rates for different users.

Representative Meyer, this letter contains our impressions regarding the scope of KRS Chapter 220, yet should not be considered to be a comprehensive legal opinion. We have been unable to find reported case law addressing your questions. Should you wish to discuss this further, please feel free to call.

Sincerely yours,



Thomas A. Marshall  
Douglas F. Brent  
Office of General Counsel

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Attachments