



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

May 5, 1998

John N. Hughes
Attorney at Law
Professional Service Corporation
124 West Todd Street
Frankfort, Kentucky 40601

RE: Contract With Sanitation District
Homeowner's Association Sewage Plant

Dear Mr. Hughes:

Commission Staff is in receipt of your letter dated May 4, 1998, in which you request a declaratory ruling that your client, a sanitation district, and a subdivision developer do not require a Certificate of Convenience and Necessity to construct a sanitary sewer service to a subdivision.

In your letter of April 9, 1998, you state that the facilities are being built by the subdivision developer under a contractual arrangement with the sanitation district. In your letter of May 4, 1998, you state the developer has contracted with the sanitation district to construct the plant for the sanitation district and that the developer will only operate the plant until the facilities are transferred to the sanitation district.

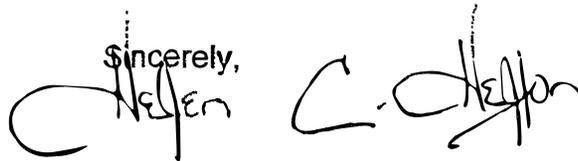
Under the above set of facts, the facilities to be constructed for a sanitation district would not be subject to the jurisdiction of the Public Service Commission of Kentucky.

Also in your letter of May 4, 1998, you request a declaratory ruling as to whether a homeowner's association that owns and operates a sewer treatment plant is exempt from the Commissions' regulations. You state that the association is composed of only the property owners within a platted subdivision and that only those owners can be members and receive service from the plant. However, it is unclear from your letter whether the association has been formed or when it will be formed.

To summarize, while the situation described by you wherein the association owns and operates the sewage treatment facilities and limits service to its members located within the boundaries of the platted subdivision would not constitute a utility subject to the Commission's jurisdiction, any variation in this scenario could change this conclusion.

John N. Hughes
May 5, 1998
Page 2

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to James R. Goff, staff attorney, at 502-564-3940, extension 261.

Sincerely,


Helen C. Helton
Executive Director

RECEIVED

MAY 04 1998

GENERAL COUNSEL

JOHN N. HUGHES
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124 WEST TODD STREET
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Telephone:
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May 4, 1998

Telecopier:
(502) 875-7059

J.E. Goff
Public Service Commission
730 Schenkel Lane
Frankfort, KY 40601

Re: Sanitation District Jurisdiction

Dear J.R.:

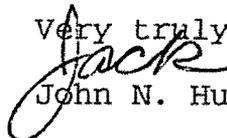
In response to your letter of April 21st, requesting additional information about the contract between a developer and a sanitation district, there is no contract at this time. The matter is in its preliminary stages of development and the details are not final. However, the essential issue that I would like confirmed is whether a developer, who contracts with a sanitation district to construct for the district a treatment plant is exempt from PSC regulation. As I mentioned in my letter of April 9th, I believe that the sanitation is exempt from regulation and because of that exemption, the contract with the developer is likewise exempt.

A second aspect to this agreement may include the developer operating the treatment plant under contract with the district. The developer would be responsible to the district to maintain the facilities until the facilities are transferred to the district. Because this arrangement involves an unregulated sanitation district, I believe that this too is not jurisdictional to the PSC.

In a related matter, I would like confirmation that a home owner's association which owns and operates a sewer treatment plant is exempt from PSC regulation. The association will be composed of all property owners within a platted subdivision. Only property owners can be members and can receive service from the treatment plant. All fees and charges will be used to defray operating costs. Because this service is not offered to the public, I believe that it is not subject to the Commission's oversight.

Thank you for your attention to this matter.

Very truly yours,


John N. Hughes

98-00916

Willis
cc: Smith
E.

JOHN N. HUGHES
Attorney at Law
Professional Service Corporation
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FRANKFORT, KENTUCKY 40601

Telephone:
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April 9, 1998

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Telecopier:

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PUBLIC SERVICE
COMMISSION

APR 10 1998

Helen Helton
Executive Director
Public Service Commission
730 Schenkel Lane
Frankfort, KY 40601

GENERAL COUNSEL

Re: Sanitation District Jurisdiction

Dear Ms. Helton:

I represent a sanitation district that is in the process of providing sanitary sewer service to a subdivision, soon to be constructed. The district will authorize service to the subdivision by resolution and charge its current rates and fees for service.

The developer of the subdivision will finance, construct, and install the sewer facilities during the construction of the subdivision pursuant to a contract with the district. That contract will require that the developer install the facilities according to the districts specifications and in compliance with the district's operating standards. Upon completion of the construction and after a period of operation to assure that the facilities are in compliance with the district's standards and all other contractual obligations, the facilities will become part of the district's sewer system.

Because these facilities are being built for the sanitation district and are part of a contractual arrangement between the developer and the district to facilitate the construction of the sewer system, I believe that they are not facilities that are to be used to serve the public as that term is used in KRS 278.020. They are facilities that are to become part of the sanitation district. Sanitation districts are not regulated by the Commission, therefore, this arrangement between the developer and the district is not subject to Commission review or the requirement of a certificate of convenience and necessity.

I would like confirmation from you and your staff that this interpretation is correct so that neither the developer, nor the district violates any jurisdictional requirement of the Commission.

Thank you for your attention to this matter.

Very truly yours,
John N. Hughes
John N. Hughes

220.110 Declaration and certification of organization -- Status and powers of district -- Corporate name.

- (1) If no suit is filed against the commissioner under KRS 220.100, or if suit is filed and final judgment in the Circuit Court or an appeal is in favor of the commissioner, the commissioner shall forthwith declare the district organized into a sanitation district and give it a corporate name, as provided in KRS 220.050, by which in all proceedings it shall thereafter be known. The commissioner shall certify his act to the county clerk of each county in which any part of the district is located, and to the Secretary of State, each of whom shall record the certificate as articles of incorporation. The commissioner shall also certify his act to the county judge/executive of each county in which any part of the district is located. The district shall then be a political subdivision and shall have perpetual existence, except as otherwise specifically provided in KRS 220.530, with power to sue and be sued, contract and be contracted with, incur liabilities and obligations, exercise the right of eminent domain, assess, tax, and contract for rentals as herein provided, issue bonds, and do and perform all acts herein expressly authorized and all acts necessary and proper for the carrying out of the purpose for which the district was created, and for executing the powers with which it is invested.
- (2) The board of directors of the district may amend the corporate name of the district, but the amendment shall not be effective until certified by the board to the commissioner, the county clerk and county judge/executive of each county in which any part of the district is located, and to the Secretary of State.

Effective: July 15, 1988

History: Amended 1988 Ky. Acts ch. 330, sec. 5, effective July 15, 1988. -- Amended 1978 Ky. Acts ch. 384, sec. 356, effective June 17, 1978. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 2062g-11.

98-00916

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cc: Smith
E.

JOHN N. HUGHES
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PUBLIC SERVICE
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APR 10 1998

Helen Helton
Executive Director
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GENERAL COUNSEL

Re: Sanitation District Jurisdiction

Dear Ms. Helton:

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The developer of the subdivision will finance, construct, and install the sewer facilities during the construction of the subdivision pursuant to a contract with the district. That contract will require that the developer install the facilities according to the districts specifications and in compliance with the district's operating standards. Upon completion of the construction and after a period of operation to assure that the facilities are in compliance with the district's standards and all other contractual obligations, the facilities will become part of the district's sewer system.

Because these facilities are being built for the sanitation district and are part of a contractual arrangement between the developer and the district to facilitate the construction of the sewer system, I believe that they are not facilities that are to be used to serve the public as that term is used in KRS 278.020. They are facilities that are to become part of the sanitation district. Sanitation districts are not regulated by the Commission, therefore, this arrangement between the developer and the district is not subject to Commission review or the requirement of a certificate of convenience and necessity.

I would like confirmation from you and your staff that this interpretation is correct so that neither the developer, nor the district violates any jurisdictional requirement of the Commission.

Thank you for your attention to this matter.

Very truly yours,
John N. Hughes
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April 9, 1998

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COMMISSION

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GENERAL COUNSEL

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April 21, 1998

John N. Hughes
Attorney at Law
Professional Service Corporation
124 West Todd Street
Frankfort, Kentucky 40601

Dear Mr. Hughes:

Your letter of April 9, 1998 has been forwarded to me for a response. Under the facts you set out in your letter, the subdivision developer will build the sewer facilities under a contract with the sanitation district. You also state that for a period of time the developer will operate the system while the facilities are inspected to determine if they meet the district's standards under the terms of the contract.

In order for me to render an opinion on your request, I will need to have a copy of the contract to become familiar with the contractual obligations and provisions of non-compliance, if any.

Please, at your earliest convenience, furnish the Commission a copy of the contract between the developer and the district.

Very truly yours,

A handwritten signature in black ink that reads "James R. Goff".

J. R. Goff
Attorney
Office of General Counsel

WC



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April 21, 1998

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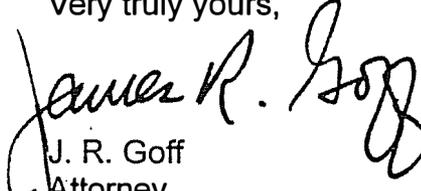
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