



Ernie Fletcher
Governor

LaJuana S. Wilcher, Secretary
Environmental and Public
Protection Cabinet

Christopher L. Lilly
Commissioner
Department of Public Protection

Commonwealth of Kentucky
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, Kentucky 40602-0615
Telephone: (502) 564-3940
Fax: (502) 564 3460

Mark David Goss
Chairman

Ellen C. Williams
Vice Chairman

Gregory Coker
Commissioner

March 10, 2005

Mr. Berl Robinson
230 River Valley Road
Frankfort, Kentucky 40601

Mr. Clifford Toles
55 Boone Creek Estates
Frankfort, Kentucky 40601

Ms. Yvonne Hill
P.O. Box 4559
Frankfort, Kentucky 40604

Gentlemen and Ms. Hill:

Commission Staff has recently learned that a member of Farmdale Water District's Board of Commissioners also serves as general manager of Farmdale Water District ("Farmdale District"). The purpose of this letter is to bring to your attention the significant problems that this practice presents and to request corrective action.

Commission Staff is aware of the following facts: Farmdale District is a water district organized pursuant to KRS Chapter 74. It currently provides water service to approximately 2,512 customers in Franklin and Anderson Counties, Kentucky. A three-member board of commissioners controls and manages the water district. Since 1994 Berl Robinson has served as Farmdale District's general manager and as a member of Farmdale District's Board of Commissioners.

These facts present the following issue: Is membership on a water district's board of commissioners incompatible as a matter of law with the position of water district general manager or superintendent?

Kentucky law recognizes two kinds of incompatibility between offices. Adams v. Commonwealth ex rel. Buckman, Ky., 268 S.W.2d 930 (1954). The first is a constitutional or statutory incompatibility, which the Constitution or a legislative enactment declares. See, e.g., Ky. Const. §165; KRS 61.080. The second is a common law or functional incompatibility, which the courts have declared in the

absence of any constitutional or statutory prohibition when the two offices are inherently inconsistent, or when the occupancy of the two offices is detrimental to the public interest. "Functional incompatibility depends on the character and relation of the offices and not on the matter of physical inability to discharge the duties of both of them. The question is whether one office is subordinated to the other, or whether the functions of the two are inherently inconsistent or repugnant, or whether the occupancy of both offices is detrimental to the public interest." LaGrange City Council v. Hall Brothers Co., Ky.App., 3 S.W.3d 765, 769-770 (1999). Both types of incompatibility are based upon the premise that "it is the duty of a public officer or servant to discharge his or her duties uninfluenced by the duties and obligations of another office." Rash v. Louisville and Jefferson County Metropolitan Sewer Dist., Ky., 217 S.W.2d 232, 236-237 (1949).

KRS Chapter 74 clearly establishes a superior-subordinate relationship for water district commissioners and water district general managers. KRS 74.020(1) provides that a water district "shall be administered by a board of commissioners which shall control and manage the affairs of the district." KRS 74.040 permits the board of commissioners to appoint a "competent person" as "superintendent" or general manager. Such person "shall be subject to the orders" of the board of commissioners and "shall look after the improvements" that the water district establishes. He or she, with the approval of the board of commissioners, "may employ all necessary labor and assistance in the performance of his duties, and ... shall report to the commission all expenses incurred." KRS 74.040 further provides that the board of commissioners shall fix the general manager's salary.

Given the nature of the relationship that exists between a water district's board of commissioners and its general manager, the offices are clearly incompatible. "Two (2) offices or positions are incompatible whenever one has the power of appointment to or removal from the other and whenever there are any potential conflicts of interest between the two (2), such as salary negotiations, supervision and control of duties and obligations to the public to exercise independent judgment." LaGrange City Council at 770. Moreover, abstaining from any official actions will not remedy any conflict between the two offices. Id.

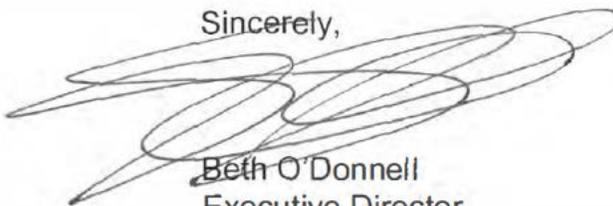
Commission Staff is of the opinion that Farmdale District's present practice of retaining Mr. Robinson as general manager while he serves as a member of Farmdale District's Board of Commissioners is contrary to law. Commission Staff recommends that action be taken to end this practice as soon as possible and requests that Farmdale District advise it in writing no later than May 1, 2005 of what actions, if any, that the district intends to take in this matter. Please note that failure to take any action may create uncertainty regarding the legality of future decisions of Farmdale District's Board of Commissioners and may result in challenges to Mr. Robinson's continued membership on that Board.

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 PSC should the

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issues herein be formally presented for Commission resolution. Questions concerning this letter should be directed to Gerald Wuetcher, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

A handwritten signature in black ink, consisting of several overlapping, elongated loops and strokes, positioned above the printed name.

Beth O'Donnell
Executive Director

CONLIFFE, SANDMANN & SULLIVAN

PROFESSIONAL LIMITED LIABILITY COMPANY

2000 WATERFRONT PLAZA

325 WEST MAIN STREET

LOUISVILLE, KENTUCKY 40202

PHONE (502) 587-7711

FAX (502) 587-7756



April 14, 2005

OF COUNSEL

I.G. SPENCER, JR.
MICHAEL E. CONLIFFE
DODD & DODD ATTORNEYS, PLLC

COLORADO OFFICE

110 Snyder Street
P.O. Box 2045
Nederland, CO 80466
(303) 258-8081 Phone
(303) 258 8107 Fax

SUBURBAN OFFICE

4169 Westport Road, Suite 111
St. Matthews, Kentucky 40207
(502) 896 2966 Phone
(502) 895 0396 Fax

CHARLES I. SANDMANN (1936-1992)
KARL N. VICTOR, JR. +
F. CHRIS GORMAN
RICHARD M. SULLIVAN
JACK R. UNDERWOOD, JR.
E. BRUCE NEIKIRK
GORDON GALLAGHER+++
STEVEN J. KRIEGSHABER++
EDWIN J. LOWRY, JR.
JAMES A. BABBITZ
KENNETH A. BOHNER
JAMES T. MITCHELL
EDWARD F. BUSCH
PAMELA M. WORKHOVEN
WENDELL L. JONES++++
EDWARD L. LASLEY
JENNIFER RUST RUTHERFORD
SCOTT A. JOHNSON++
CLAIRE M. O'LAUGHLIN++

+Also Admitted in Indiana

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PUBLIC SERVICE
COMMISSION

Beth O'Donnell, Executive Director
Commonwealth of Kentucky
Public Service Commission
211 Sower Boulevard
P.O. Box 615
Frankfort, Kentucky 40602-0615

Re: Berl Robinson/Farmdale Water District

Dear Ms. O'Donnell:

I am in receipt of your letter of March 10, 2005 and have been asked by Mr. Robinson to respond to same.

Mr. Robinson served on the Board of the Farmdale Water District Board of Commissioners since 1976. When Mr. Robinson took this position, the Farmdale Water District had 775 customers and was \$500,000.00 in debt. They had no place to meet and rotated meetings at the homes of the Commissioners. Today, the Farmdale Water District has over \$1 million dollars in the bank and has 2548 customers.

This has been accomplished without the necessity of a rate increase during that 29 year period. The only increases in rates have been direct pass-throughs. While Mr. Robinson is not taking the sole credit for the turn-around, prosperity and lack of complaints that the Farmdale Water District has enjoyed over the past 29 years, he is, in large part, responsible for same.

The Bluegrass Area Development District has rated the Farmdale Water District the number one water district in that seventeen county area.

I have reviewed your legal analysis of the issue of incompatible offices. While there is room for disagreement, we do not believe that the fact that Mr. Robinson is a Director and

Beth O'Donnell, Executive Director
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General Manager is automatically disqualifying. We are somewhat curious, however, about how this rather insignificant water district situation came to the attention of the Public Service Commission and why they felt the need to act on this matter.

While we do not necessarily agree with the analysis provided by the Public Service Commission concerning the incompatibility of Mr. Robinson's two positions, he will acquiesce in your wishes. Mr. Robinson will resign as General Manager as soon as a replacement can be located. We anticipate finding such a replacement within sixty (60) days of the date of this letter, and probably much sooner.

We thank you for your attention to this matter and hope this resolves the issue.

Sincerely,



Richard M. Sullivan
E-Mail @ RSullivan@cssattorneys.com

RMS/rst

cc: Berl Robinson