



Ernie Fletcher
Governor

Teresa J. Hill, Secretary
Environmental and Public
Protection Cabinet

Timothy J. LeDonne
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
psc.ky.gov

Mark David Goss
Chairman

John W. Clay
Commissioner

April 20, 2007

Mr. Phillip Ward
Oldham County Water District
Post Office Box 51
Buckner, Kentucky 40010

Dear Mr. Ward:

Commission Staff acknowledges receipt of your letter of March 28, 2007, in which Oldham County Water District ("Oldham District") requests an opinion regarding the need for Commission approval to dispose of two water storage tanks.

In your letter, you state the following facts: Oldham District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that produce and distribute water to portions of Oldham County, Kentucky. Oldham District has two ground water storage tanks that it wishes to eliminate. One water storage tank has a capacity of 500,000 gallons and was built in 1966. The other water storage tank has a capacity of 250,000 gallons and was built in 1994. You do not state the original cost of either storage tank. Because of changes in the hydraulics of Oldham District's water distribution system, the storage tanks are no longer useful in maintaining minimum required water pressures. Oldham District is considering dismantling the water storage tanks but has received inquiries from the city of LaGrange regarding the possible purchase of these tanks.

In your letter you present the following questions:

- (1) May Oldham District sell these water storage tanks to the city of LaGrange?
- (2) If Oldham District may sell the water storage tanks, what procedures must be followed?

As to the first question, Commission Staff is not aware of any statutory provision that prohibits Oldham District from selling surplus property. KRS 74.070 specifically authorizes a water district's board of commissioners to "do all acts necessary to carry on the work." The sale or other disposal of surplus property would appear to fall within this grant of authority. See also OAG 67-544 (Dec. 22, 1967). Commission Staff recommends, however, that Oldham District carefully review all ordinances for

outstanding revenue bonds and all lending agreements for any restrictions regarding the sale or transfer of water district assets.

As to the procedures for selling the water storage tanks, Commission Staff notes that Commission approval of any sale is not required. KRS 278.218 is the only statute that expressly addresses Commission approval of the sale of utility assets. It provides:

(1) No person shall acquire or transfer ownership of or control, or the right to control, any assets that are owned by a utility as defined under KRS 278.010(3)(a) without prior approval of the commission, if the assets have an original book value of one million dollars (\$1,000,000) or more and:

(a) The assets are to be transferred by the utility for reasons other than obsolescence; or

(b) The assets will continue to be used to provide the same or similar service to the utility or its customers.

(2) The commission shall grant its approval if the transaction is for a proper purpose and is consistent with the public interest.

KRS 278.218 applies only to "any assets that are owned by a utility as defined under KRS 278.010(3)(a)." KRS 278.010(3)(a) refers to facilities used in "[t]he generation, production, transmission, or distribution of electricity to or for the public, for compensation, for lights, heat, power, or other uses." Oldham District is not involved in such areas, nor have the facilities in question been used for such purposes.

Assuming that Oldham District has adopted KRS 45A.345 through KRS 45A.460 of the Kentucky Model Procurement Code, it must follow the requirements of KRS 45A.425 when disposing of the water storage tanks. KRS 45A.425 provides:

(1) A local public agency may sell or otherwise dispose of any personal property which is not needed or has become unsuitable for public use, or which would be suitable, consistent with the public interest, for some other use.

(2) A written determination as to need of suitability of any personal property of the local public agency shall be made; and such determination shall fully describe the personal property; its intended use at the time of acquisition; the reasons why it is in the public interest to dispose of the item; and the method of disposition to be used.

(3) Surplus or excess personal property as described in this section may be transferred, with or without compensation, to

another governmental agency; or it may be sold at public auction or by sealed bids in accordance with KRS 45A.365.

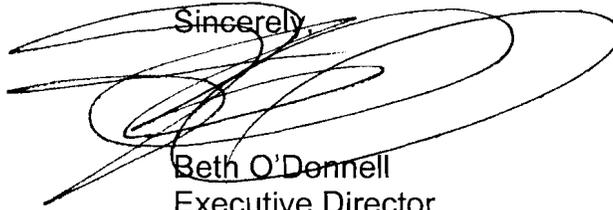
(4) In the event that a local public agency receives no bids for surplus or excess personal property, either at public auction or by sealed bid, such property may be disposed of, consistent with the public interest, in any manner deemed appropriate by the local public agency. In such instances, a written description of the property, the method of disposal, and the amount of compensation, if any, shall be made. Any compensation resulting from the disposal of surplus or excess personal property shall be transferred to the general fund of the local public agency.

If KRS 45A.425 must be followed, Oldham District has significant discretion in the manner by which it could transfer the property to the city of LaGrange. If the property is transferred to a non-public entity, then a public auction or competitive sealed bidding must occur.

In the event that Oldham District has not adopted the noted provisions of the Kentucky Model Procurement Code, then the water district should observe the common law principle of having the property appraised by two competent appraisers and selling the property found to be at surplus at not less than the appraised value. See OAG 82-8 (Jan. 5, 1982). There is no statutory requirement that Oldham District use a competitive bidding process to select a buyer.

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. Commission Staff strongly encourages Oldham District to consult with its legal counsel if it has additional questions on this issue. Questions concerning this opinion should be directed to Gerald Wuetcher, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,

A large, stylized handwritten signature in black ink, consisting of several overlapping loops and lines, positioned above the printed name.

Beth O'Donnell
Executive Director