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John W. Clay  
Commissioner

November 17, 2008

Mr. Eddie A. Chinn  
Bracken County Water District  
Post Office Box 201  
Brooksville, Kentucky 41001-0201

Dear Mr. Chinn:

Commission Staff acknowledges receipt of your letter of October 27, 2008 in which you request guidance regarding Bracken County Water District's ("Bracken District") proposed sale of water to East Pendleton County Water District ("East Pendleton District") and proposed sale of excess real property.

Commission Staff understands the facts as follows:

Bracken District, a water district organized pursuant to KRS Chapter 74, owns and operates a facility that distributes water to approximately 2,334 customers in Bracken County and provides wholesale water service to the city of Brooksville. As of December 31, 2007, Bracken District had total utility plant of \$12,816,287 and total assets and other debits of \$11,148,269.

Bracken District has agreed to sell water to East Pendleton District to permit that water district to serve approximately 30 customers in its territory. It will charge the same rate to East Pendleton District that it presently charges to Brooksville. (No surcharge, however, will be assessed to East Pendleton District since its delivery point is outside of the Surcharge Area.) East Pendleton District is responsible for the cost of master meter and the meter installation cost. No written agreement exists between the two water districts.

On an unrelated matter, Bracken District plans to sell surplus real property that had previously been purchased to construct some utility facilities. The original purchase cost of this property is approximately \$160,000. Bracken District intends to use these proceeds to install automated meter reading equipment.

Your letter presents the following questions:

1. What approval, if any, must Bracken District obtain from the Commission prior to beginning water sales to East Pendleton District?
2. What actions, if any, must Bracken District undertake to lawfully dispose of surplus real property?

As to the first issue, Commission Staff is of the opinion that Commission approval of the proposed transaction is not required, but that Bracken District's filed rate schedules should be revised to reflect specifically the wholesale rate to East Pendleton District and the absence of any surcharge on sales to East Pendleton District. Bracken District's current rate schedule sets forth a wholesale rate of \$2.74 per 1,000 gallons of water, but this rate appears to be limited to sales to Brooksville. Moreover, the rate schedule requires the assessment of a surcharge of \$0.34 per 1,000 gallons to wholesale customers. KRS 278.160(1)<sup>1</sup> requires Bracken District to file with the Commission a schedule of its rates. KRS 278.160(2)<sup>2</sup> prohibits Bracken District from charging rates other than those set forth its filed rate schedules. The procedure for revising a rate schedule is set forth in KRS 278.180 and Administrative Regulation 807 KAR 5:011. For your reference, a copy of each is enclosed.

As to the second issue, Commission approval is generally not required for the sale of utility assets unless such sale represents a transfer of control.<sup>3</sup> As none of the facts presented suggest that a transfer of control will result from the sale of the surplus property, Commission Staff is of the opinion that Commission approval of the proposed sale of surplus property is not required.

In two published opinions, copies enclosed, the Attorney General has provided guidance on the sale of surplus property. He has opined that water districts "should not sell it at a price less than the appraised value, after appraisal by a competent appraiser or by competent appraisers." The property must appear to be no longer necessary to the functions of the water district<sup>4</sup> It should be appraised by two competent advisors

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<sup>1</sup> Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

<sup>3</sup> See KRS 278.020(5) and (6). KRS 278.218 requires approval of the sale of certain assets of electric utilities.

and not sold at less than the appraised value. "Prudence and sound management would dictate that such excess ... property, if it is properly found to be excess, be disposed of at no less than the appraised value."

Although specifically applicable to personal property and not real property, the Kentucky Local Model Procurement Code, KRS 45A.425, also offers guidance for the disposal of surplus or excess real property. It states, in pertinent part, that a public agency:

- May sell or otherwise dispose of property which is not needed or has become unsuitable for public use, or which would be suitable, consistent with public interest, for some other use.
- Should make a written determination as to need and suitability of the property. The determination should fully describe the property, including 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.
- May sell at public auction or by sealed bids
- May dispose of by any other means deemed appropriate, if no bids, either at public auction or by sealed bid, are received.

This letter represents Commission Staffs 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 Virginia Gregg, Staff Attorney, at (502) 564-3940. Extension 407.

Sincerely,



David S. Samford  
Deputy Executive Director/General Counsel

**278.180 Changes in rates, how made.**

- (1) Except as provided in subsection (2) of this section, no change shall be made by any utility in any rate except upon thirty (30) days' notice to the commission, stating plainly the changes proposed to be made and the time when the changed rates will go into effect. However, the commission may, in its discretion, based upon a showing of good cause in any case, shorten the notice period from thirty (30) days to a period of not less than twenty (20) days. The commission may order a rate change only after giving an identical notice to the utility. The commission may order the utility to give notice of its proposed rate increase to that utility's customers in the manner set forth in its regulations.
- (2) The commission, upon application of any utility, may prescribe a less time within which a reduction of rates may be made.

Effective: July 15, 1986

History: Amended 1986 Ky. Acts ch. 300, sec. 2, effective July 15, 1986. -- Amended 1982 Ky. Acts ch. 82, sec. 22, effective July 15, 1982; and ch. 242, sec. 1, effective July 15, 1982. -- Amended 1978 Ky. Acts ch. 379, sec. 24, effective April 1, 1979. -- Amended 1976 Ky. Acts ch. 88, sec. 12, effective March 29, 1976. -- Recodified 1942 Ky. Acts ch. 208, sec. 1, effective October 1, 1942, from Ky. Stat. sec. 3952-15.

**807 KAR 5:011. Tariffs.**

RELATES TO: KRS Chapter 278

STATUTORY AUTHORITY: KRS 278.160(1)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 278.160(1) provides that the commission shall prescribe rules under which each utility shall file schedules showing all rates and conditions established by it and collected or enforced.

Section 1. Definitions. For purpose of this administrative regulation: "Commission" means the Public Service Commission.

Section 2. General. All utilities under the jurisdiction of the commission shall file with the secretary two (2) cover letters and four (4) complete copies of a tariff containing schedules of all its rates, charges, tolls and maps or plats of the area in which it offers service and all its rules and administrative regulations and shall keep a copy of said tariff open to public inspection in its offices and places of business, as required by KRS 278.160, in substantially the form and manner hereinafter set out. If a utility furnishes more than one (1) kind of service (water and electricity for example), a separate tariff must be filed for each kind of service. For the purpose of the commission's rules and administrative regulations, the utility's office or place of business shall be deemed a location at which the utility regularly employs and stations one (1) or more employees and is open to the public.

Section 3. Form and Size of Tariffs. (1) All tariffs must be printed from type not smaller than six (6) point or typewritten, mimeographed or produced by similar process, on hard calendared paper of good quality.

(2) The pages of a tariff shall be eight and one-half (8 1/2) by eleven (11) inches in size.

(3) Utilities shall publish tariffs in loose-leaf form using one (1) side of the paper only, with not more than one (1) schedule to the page.

(4) The front cover page of a tariff shall contain the following:

(a) Name of the utility and location of principal office.

(b) Statement of kind of service offered.

(c) General statement of territory served.

(d) Date of issue and date tariff is to become effective.

(e) Signature of the officer of the utility authorized to issue tariffs.

(f) Identifying designation in the upper right-hand corner as required by Section 5 of this administrative regulation.

(5) The second and succeeding pages shall contain:

(a) All the rules and administrative regulations of the utility.

(b) Rate schedules showing all rates and charges for the several classes of service.

(c) Signature of the officer of the utility authorized to issue tariffs.

(d) Date of issue and date tariff is to become effective.

(e) Identifying designation in upper right-hand corner as required by Section 5 of this administrative regulation.

(6) In that portion of the tariff dealing with rates, the desired information shall be shown under the following captions in the order listed:

(a) Applicable: show territory covered by tariff.

(b) Availability of service: show classes of customers affected, such as domestic, commercial, etc.

(c) Rates: list all rates covered by tariff.

(d) Minimum charge: state amount of charge and quantity allowed.

(e) Delayed payment charge: state if penalty or discount.

(f) Term: if contracts are made for certain periods, give length of term.

(g) Special rules: if any special rules and administrative regulations are in effect covering this tariff, list same hereunder.

(7) The secretary of the commission will furnish standard forms of tariffs on request.

Section 4. Contents of Schedules. (1) Each rate schedule in addition to a clear statement of all rates thereunder must state the city, town, village or district in which rates are applicable; provided, however, that schedules applicable in a large number of communities must be accompanied by an accurate index by which each community in which the rates are applicable may be readily ascertained, in which case the applicability of a schedule may be indicated by reference to the index sheet. (Example: Applicable within the corporate limits of the City of \_\_\_\_\_, or see Tariff Sheet No. 2B for applicability.)

(2) Each rate schedule must state that class of service available under the rates stated therein. (Example: Available for domestic lighting, or available for all purposes, etc.)

(3) For a tariff in which a number of schedules are shown available for various uses, each schedule shall be identified by a number or by a group of letters, and if by a group of letters, the designation shall be indicative of the class of service for which the schedule is available. (Example: Schedule No. 1 or Tariff D.U.R. indicating that the schedule states domestic utility rates.)

(4)(a) Each page of the tariff shall bear the Commission Number of the tariff, the date issued and effective, the signature of the issuing officer, and in the upper right-hand corner, a further designation, such as "Original Sheet No. 1," "Original Sheet No. 2," etc.

(b) In the case of a change in the text of any page as hereinafter provided the further designation shall be "First Revised Sheet No. 1, cancelling Original Sheet No. 1," etc.

(c) Tariffs may be further divided into sections, and so designated if required by their size and contents.

(5) All schedules shall state whether a minimum charge is made, and if so, they shall set out all such charges, and further state whether such minimum charge is subject to prompt payment discount or delayed payment penalty.

Section 5. Designation of Tariffs. All tariffs must bear in the upper right-hand corner of the front cover page the commission number thereof. Subsequent tariffs filed as provided by Sections 6 and 9 of this administrative regulation, must continue such designation in consecutive numerical order. Any subsequent tariff must also show the commission number of the tariff cancelled, changed or modified by it.

Section 6. Change or Withdrawal of Rate Schedules Administrative Regulations.  tariff, or any

provision thereof, may be changed, cancelled or withdrawn except upon such terms and conditions as the commission may impose and in compliance with KRS 278.180 and Sections 6 and 9 of this administrative regulation.

(2)(a) All revisions in tariff sheets shall contain a symbol in the margin indicating the change made. These symbols are as follows:

- (C) To signify changed administrative regulation.
- (D) To signify discontinued rate, administrative regulation or test.
- (I) To signify increase.
- (N) To signify new rate *and/or* new test.
- (R) To signify reduction.
- (T) To signify a change in text.

(b) In the case of a change in the text of any tariff sheet where the rate remains the same, the effective date shall remain the same as that on the amended sheet. The issued date of the change shall be the date the filing is made with the commission.

(c) All tariff filings which involve the furnishing of equipment or services to the customer by the utility shall be accompanied by a description of the equipment or service involved in the filing and a cost of service study justifying the proposed charges.

(3) New tariffs stating changes in any provision of any effective tariff may be issued and put into effect by either of the two (2) following methods:

(a) By order of the commission upon formal application by the utility, and after hearing, as provided by Section 7 of this administrative regulation.

(b) By issuing and filing on at least twenty (20) days' notice to the commission and the public a complete new tariff (or revised sheet of an existing tariff) stating all the provisions and schedules proposed to become effective as provided by Sections 7 and 9 of this administrative regulation.

(4) The provisions or rates stated on any sheet or page of a tariff may be modified or changed by the filing of a revision of such sheet or page in accordance with the provisions of this administrative regulation. Such revisions must be identified as required herein.

Section 7. Adjustment of Rates on Application. Upon the granting of authority for a change in rates, the utility shall file a tariff setting out the rate, classification, charge, or rule and administrative regulation authorized by the commission to become effective the order may direct, and each page of the tariff so filed shall state that it is "issued by authority of an order of the Public Service Commission in Case No. \_\_\_\_\_ dated \_\_\_\_\_, 19\_\_\_\_."

Section 8. Notices. Notices shall be given by the utility in the following manner:

(1) Advance notice, abbreviated newspaper notice. Utilities with gross revenues greater than \$1,000,000 shall notify the commission in writing of Intent to File Rate Application at least four (4) weeks prior to filing. At or about this time application may be made to the commission for permission to use an abbreviated form of newspaper notice of proposed rate increases provided the notice includes a coupon which may be used to obtain a copy from applicant of the full schedule of increases or rate changes.

(2) Notice to customers of proposed rate changes. If the applicant has twenty (20) or fewer customers, typewritten notice of the proposed rate changes and the estimated amount of increase per customer class

shall be placed in the mail to each customer no later than the date on which the application is filed with the commission and, in addition, a sheet shall be posted at its place of business containing such information. Except for sewer utilities which must give a notice by mail to all of their customers pursuant to KRS 278.185, all applicants with more than twenty (20) customers shall post a sheet stating the proposed rates and the estimated amount of increase per customer class at their place of business and, in addition, notice thereof:

(a) Shall be included with customer billings made on or before the application is filed with the commission; or

(b) Shall be published by such date in a trade publication or newsletter going to all customers; or

(c) Shall be published once a week for three (3) consecutive weeks in a prominent manner in a newspaper of general circulation in their service area, the first publication to be made prior to the filing of the application with the commission. Each such notice shall contain the following language:

The rates contained in this notice are the rates proposed by (name of utility). However, the Public Service Commission may order rates to be charged that differ from these proposed rates. Such action may result in rates for consumers other than the rates in this notice.

(3) Notice as to intervention. The notice made in compliance with subsection (2) of this section shall include a statement to the effect:

(a) That any corporation, association, body politic or person may by motion within thirty (30) days after publication or mailing of notice of the proposed rate changes request leave to intervene;

(b) That the motion shall be submitted to the Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky 40602, and shall set forth the grounds for the request including the status and interest of the party; and

(c) That intervenors may obtain copies of the application and testimony by contacting the applicant at a name and address to be stated in the notice. A copy of the application and testimony shall be available for public inspection at the utility's offices.

(4) Compliance by electric utilities with rate schedule information required by 807 KAR 5:051. If notice is given by subsection (2)(a) or (b) of this section and if the notice contains a clear and concise explanation of the proposed change in the rate schedule applicable to each customer, no notice under Section 2 of 807 KAR 5:051 shall be required. Otherwise, such notice shall be given.

(5) Notice of hearing. Where notice pursuant to KRS 424.300 is published by the applicant in a newspaper, it shall be published in a newspaper of general circulation in the areas that will be affected one (1) time not less than seven (7) nor more than twenty-one (21) days prior to the hearing giving the purpose, time, place and date of hearing.

(6) Extensions of time. Applications for extensions of time shall be made to the commission in writing and will be granted only upon a showing of compelling reason.

Section 9. Statutory Notice to the Commission. (1) When a new tariff has been so issued and notice thereof given to the commission and the public in all respects as hereinbefore provided, such tariff will become effective on the date stated therein unless the operation thereof be suspended and the rates and administrative regulations therein be deferred by an order of the commission pending a hearing concerning the propriety of the proposed rates and administrative regulations under KRS 278.190.

(2) All information and notice required by these rules shall be furnished to the commission at the time

of the filing of any proposed revisions in rates or administrative regulations, and the twenty (20) days' statutory notice to the commission will not commence to run and will not be computed until such information and notice is filed if the commission determines that there was a substantial omission, which was prejudicial to full consideration by the commission or to an intervenor.

Section 10. Nonrecurring Charges. Nonrecurring charges are charges to customers due to a specific request for certain types of service activity for which, when the activity is completed, no additional charges may be incurred. Such charges are intended to be limited in nature and to recover the specific cost of the activity. Nonrecurring charges include reconnection charges, late payment fees, service order changes and hook-on or tap fees. This section allows a utility to seek a rate revision for a nonrecurring charge outside a general rate proceeding. In addition to the specific information required pursuant to the above sections, the following information must be submitted to the commission when a utility makes a filing to increase miscellaneous or nonrecurring service charges outside a general rate case:

(1) Each requested rate revision must be accompanied by:

(a) A specific cost justification for the proposed rates and a full description of the equipment or service provided under tariff (807 KAR 5:001, Section 6(2)(c)). The proposed rates should at least cover incremental costs, and a reasonable contribution to overhead. Incremental costs are defined as those costs which would be specifically incurred in the provision of this service.

(b) A copy of the public notice of each requested rate revision and verification that it has been made pursuant to Section 8 of this administrative regulation. In addition to the notice requirements contained in Section 8 of this administrative regulation, the utility shall also mail a copy of its filing to the Attorney General's Consumer Protection Division. The Attorney General will then have ten (10) days to notify the commission in writing if it requests a hearing in a particular case.

(c) A detailed statement explaining why the proposed changes could not have been included in the most previous general rate case, and why current conditions prevent deferring the proposed changes until the next general rate request.

(d) An impact statement identifying the group of customers affected by the proposed tariff. The impact statement shall identify potential as well as existing customers.

(e) A copy of the utility's income statement and balance sheet for a recent twelve (12) month period.

(2) If the additional revenue to be generated from the proposed tariff revisions exceeds by five (5) percent the total revenues provided by all miscellaneous and nonrecurring charges for a recent twelve (12) month period, the utility must file, in addition to the information set out in subsection (1)(a) of this section, the following: An absorption test showing that the additional net income generated by the tariff filing will not result in an increase in the rate of return (or other applicable valuation methods) to a level greater than that which was allowed in the most recent rate case. Any general rate increases received during the twelve (12) month period must be annualized. Any significant cost changes may be included but must be documented as part of the filing.

(3) No more than two (2) such tariff filings under this procedure shall be made between general rate cases. Additional tariff filings for nonrecurring charges will be processed according to general rate case procedures.

When these requirements are met, such a filing may be made by letter with supporting documentation and will not require the information normally required pursuant to the commission's general rate case

administrative regulation, 807 KAR 5:001, Section 9.

Section 11. Change of Ownership; Adoption Notice. (1) In case of change of ownership or control of a utility, or when a utility or a part of its business is transferred from the operating control of one company to that of another, or when its name is changed, the company which will thereafter operate the utility business must use the rates, classifications and administrative regulations of the former operating company (unless authorized to change by the commission), and shall issue, file and post an adoption notice, on a form furnished by the commission, adopting, ratifying and making its own all rates, rules, classifications and administrative regulations of the former operating utility, on file with the commission and effective at the time of such change of ownership or control.

(2) Adoption notices must likewise be filed by receivers and trustees assuming possession and operation of utilities. Adoption notices may be filed and made effective without previous notice.

(3) Adoption notices filed with the commission by each utility shall be in consecutive numerical order, beginning with Public Service Commission Adoption Notice No. 1.

(4) Within ten (10) days after the filing of an adoption notice as aforesaid by a public utility which then had no tariffs on file with the commission, said utility shall issue and file in its own name the tariff of the predecessor utility then in effect and adopted by it, or such other tariff as it proposes to put into effect in lieu thereof, in the form prescribed in Sections 2 through 5 of this administrative regulation with proper identifying designation. (Example: Public Service Commission No. 1 cancels Public Service Commission Adoption Notice No. 1.)

(5) Within ten (10) days after the filing of an adoption notice, as required by subsection (2) of this section, by a public utility which then had other tariffs on file with the commission said utility shall issue and file in its own name rate schedules and administrative regulations (on additional or revised sheets to its existing tariff, or by a complete reissue of its existing tariff, or otherwise), which shall set out the rates and administrative regulations of the predecessor utility then in effect and adopted by it, or such other rates and administrative regulations as it proposes to put into effect in lieu thereof, in accordance with the provisions of these rules with proper identifying designation. (Example: First Revision of Original Sheet No. 2A, Public Service Commission, No. 11, cancels Original Sheet No. 2A, also cancels Public Service Commission Adoption Notice No. 6; or Public Service Commission No. 12 cancels Public Service Commission No. 11, also cancels Public Service Commission Adoption Notice No. 6.)

(6) When a tariff or revision is issued by a utility in compliance with these rules which states the rates, rules and administrative regulations of the predecessor utility without change in any of the provisions thereof, the same may be filed without notice; but when such tariff or revision states any change in the effect of the rates, rules and administrative regulations of the predecessor utility, such tariff or revision shall be subject to Sections 9 and 10 of this administrative regulation.

Section 12. Posting Tariffs, Administrative Regulations and Statutes. Every utility shall provide a suitable table or desk in its office and place of business, on which shall be available to the public at all times the following:

(1) A copy of all effective tariffs and supplements setting out its rates, classifications, charges, rules and administrative regulations, together with forms of contracts and applications applicable to the territory served from that office or place of business.

- (2) Copies of the Kentucky Revised Statutes applicable to the utility.
- (3) A copy of the administrative regulations governing such utility adopted by the commission.

(4) A suitable placard, in large type, giving information to the public that said tariffs, rules and administrative regulations and statutes are kept there for public inspection.

Section 13. Special Contracts. Every utility shall file true copies of all special contracts entered into governing utility service which set out rates, charges or conditions of service not included in its general tariff. The provisions of this administrative regulation applicable to tariffs containing rates, rules and administrative regulations, and general agreements, shall also apply to the rates and schedules set out in said special contracts, so far as practicable.

Section 14. Deviations from Rules. In special cases, for good cause shown upon application to and approval by, the commission may permit deviations from these rules.

Section 15. Forms. In submitting to the commission information required by these rules the following forms shall be followed where applicable:

- (1) Form of cover sheet for tariffs.
- (2) Form for filing rules and administrative regulations.
- (3) Form for filing rate schedules.
- (4) Form of certificate of notice to the public of change in tariff where no increase of charges results.
- (5) Form of certificate of notice to the public of change in tariff which results in increased charges.
- (6) Form of adoption notice.

FORM OF COVER SHEET FOR TARIFFS  
 P.S.C. NO. \_\_\_\_\_  
 CANCELS \_\_\_\_\_ P.S.C.  
 NO. \_\_\_\_\_  
 (NAME OF COMPANY)

(LOCATION OF COMPANY)

Rates, Rules and Administrative Regulations for Furnishing  
 (SERVICE RENDERED)  
 at  
 (LOCATION SERVED)

FILED WITH PUBLIC SERVICE COMMISSION  
 OF KENTUCKY

Issued \_\_\_\_\_, 19\_\_ Effective \_\_\_\_\_, 19\_\_  
 Issued by: (Name of Utility)  
 By:

FORM FOR FILING RULES &  
ADMINISTRATIVE REGULATIONS  
(Page 2 of Tariff)

Name of Utility:

RULES & ADMINISTRATIVE REGULATIONS

Date of Issue:

Effective Date:

Issued by:

Name:

Title:

FORM FOR FILING RATE SCHEDULES  
(Page 3 of Tariff)

For: (Community, Town or City)

P.S.C. NO.:

— (Original) Sheet No. —

— (Revised)

Name of Issuing Corporation:

Cancelling P.S.C. No.:

— (Original) Sheet No. —

— (Revised)

CLASSIFICATION OF SERVICE

APPLICABLE: (Show territory covered by tariff.)

AVAILABILITY OF SERVICE: (Show classes of customers affected, such as domestic, commercial, etc.)

RATES: (List all rates covered by tariff.)

MINIMUM CHARGE: (State if penalty or discount.)

DATE OF ISSUE: (Month, Day, Year)

DATE EFFECTIVE: (Month, Day, Year)

ISSUED BY: (Name of Officer, Title, Address)

ISSUED BY AUTHORITY OF P.S.C. ORDER NO.

FORM OF CERTIFICATE OF NOTICE TO THE PUBLIC OF CHANGE IN TARIFF WHERE NO INCREASE OF CHARGES RESULTS (2 Copies Required)

To the Public Service Commission, Frankfort, Ky.

Pursuant to the Rules Governing Tariffs (effective \_\_\_\_\_), I hereby certify that I am (Title of Officer) \_\_\_\_\_ of the (Name of Utility) \_\_\_\_\_ a utility furnishing (Kind of Service) \_\_\_\_\_ service within the Commonwealth of Kentucky, which on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, issued \*Tariff P.S.C. No. \_\_\_\_\_, cancelling Tariff P.S.C. No. \_\_\_\_\_, to become effective \_\_\_\_\_, 19\_\_\_\_, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said administrative regulation, as follows:

On the \_\_\_\_\_ day of \_\_\_\_\_, 1 9 , the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) \_\_\_\_\_ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said administrative regulation.

I further certify that the proposed changes in tariff of said utility will not result in an increase in the rates or charges to any customer.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_. Address:

\*If a revised sheet, or additional sheet of a loose-leaf tariff is used to state changes in rates or administrative regulations, the filing should be described as \_\_\_\_\_ Revision of Original Sheet No. \_\_\_\_\_ P.S.C. No . . , cancelling \_\_\_\_\_ P.S.C. Adoption Notice No. \_\_\_\_\_.

FORM OF CERTIFICATE OF NOTICE TO THE PUBLIC OF CHANGE IN TARIFF WHICH RESULTS IN INCREASED RATES (2 Copies Required)

To the Public Service Commission, Frankfort, Ky.

Pursuant to the Rules Governing Tariffs (effective \_\_\_\_\_), I hereby certify that I am (Title of Officer) \_\_\_\_\_ of the (Name of Utility) \_\_\_\_\_ a utility furnishing \_\_\_\_\_ service within the Commonwealth of Kentucky, which on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, issued its \*Tariff P.S.C. No. \_\_\_\_\_, cancelling Tariff P.S.C. No. \_\_\_\_\_ to become effective \_\_\_\_\_, 19\_\_\_\_, and that notice to the public of the issuing of the same is being given in all respects as required by Section 8 of said administrative regulation, as follows:

On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the same was exhibited for public inspection at the offices and places of business of the Company in the territory affected thereby, to wit, at the following places: (Give location of offices where rates are posted.) \_\_\_\_\_ and that the same will be kept open to public inspection at said offices and places of business in conformity with the requirements of Section 8 of said administrative regulation.

\*\*On the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, typewritten or printed notice of the proposed rates or administrative regulations was mailed to each of the \_\_\_\_\_ customers of the company whose rates or charges will be increased thereby, a copy of said notice being attached thereto.

Given under my hand this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_.  
Address:

\*If a revised sheet or additional sheet of a loose-leaf tariff is used to state changes in rates or administrative regulations, the filing should be described as Revision of Original Sheet No. \_\_\_\_\_ P.S.C. No. \_\_\_\_\_, or Original Sheet No. \_\_\_\_\_ P.S.C. No. \_\_\_\_\_ cancelling \_\_\_\_\_ P.S.C. Adoption Notice No. \_\_\_\_\_

\*\*If Notice is given by publication as provided in Section 8, use the following:

That more than 20 customers will be affected by said change by way of an increase in their rates or charges, and on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, there was delivered to the \_\_\_\_\_, a newspaper of general circulation in the community in which the customers affected reside, for publication therein once a week for three consecutive weeks prior to the effective date of said change, a notice of the proposed rates or administrative regulations, a copy of said notice being attached hereto. A certificate of the publication of said notice will be furnished the Public Service Commission upon the completion of the same in accordance with Section 9(2), of said administrative regulation.

FORM OF ADOPTION NOTICE

P.S.C. Adoption Notice No.

ADOPTION NOTICE

The undersigned (Name of Utility) \_\_\_\_\_ of \_\_\_\_\_ hereby adopts, ratifies, and makes its own, in every respect as if the same had been originally filed and posted by it, all tariffs and supplements containing rates, rules and administrative regulations For furnishing (Nature of Service) \_\_\_\_\_ service at \_\_\_\_\_ in the Commonwealth of Kentucky, filed with the Public Service Commission by (Name of Predecessor) \_\_\_\_\_ of \_\_\_\_\_, and in effect on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, the date on which the public service business of the said (Name of Predecessor) \_\_\_\_\_ was taken over by it.

This notice is issued on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, in conformity with Section 10 of P.S.C. Tariff administrative regulations adopted by the Public Service Commission.

By:

(8 Ky.R. 797; Am. 1148; eff. 6-2-82; 11 Ky.R. 69; eff. 8-4-84.)

Ky. OAG 77-399, 1977 WL 247665 (Ky.A.G.)

Office of the Attorney General

Commonwealth of Kentucky

OAG

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399

July 6, 1977

WATER DISTRICTS - Commission, powers and duties

SYLLABUS: A water district is not required to use the bidding statute in selling its surplus land

Marcus A. Hanna  
Campbell County Kentucky Water District  
512 York Street  
Newport, Ky.

After acquiring, in 1972, 20 acres to construct a new district office, the Campbell County Kentucky Water District constructed the office but was left with an unused balance of 14 acres. In 1975, the district advertised the 14 acres for sale. No offers were made. This residual tract of 14 acres has become more valuable in view of its proximity to I-275 Highway, which road will be completed shortly.

Your question is whether the sale of this excess property by the water district would require new bids to be advertised because of the change in circumstances, namely, the completion of I-275.

The bidding statute, KRS 424.260, requires newspaper advertisement for bids where a contract for materials, supplies or equipment, or a lease, or a contract for nonprofessional services, involves an expenditure in excess of two thousand five hundred dollars (\$2,500). But this statute applies only where the governmental unit is the purchaser or lessee. It does not apply to sales of governmental property. We conclude that the bidding statute does not apply to the water district in this situation. The sale of such surplus property can be negotiated. It can, though it is not required, be let out on bids. However, the water commission should not sell it at a price less than the appraised value, after appraisal by a competent appraiser or by competent appraisers. See KRS 64.070. Further, before sale, it must appear to the commission that the tract is no longer necessary to the functions of the water district. Cf. KRS 65.010 and §2.060.

Charles W. Runyan  
Asst. Dep. Atty. Genl

Ky. OAG 77-399, 1977 WL 247665 (Ky.A.G.)  
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1982 Ky. Op. Atty. Gen. 2-8, Ky. OAG 82-8, 1982 WL 177148 (Ky.A.G.)

\*1 Office of the Attorney General

Commonwealth of Kentucky

OAG

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January 5, 1982

Mr. Dan D. Ball  
Lawrence County Attorney  
122 Main Cross Street  
Louisa, Kentucky 41230

Dear Mr. Ball:

You raise a question as to the legality of a sale of a bulldozer by the Lawrence Fiscal Court without bids. The equipment is no longer needed by the county. The W & W Paving Company apparently negotiated a purchase of the equipment for \$40,000.00. One of the partners in the purchasing firm is a son of Ray Williams, who is now a member of fiscal court and will on January 4, 1982, begin serving as county judge/executive.

Assuming that Lawrence Fiscal Court has adopted KRS 45A.345 through 45A.460, of the Kentucky Model Procurement Code, pursuant to KRS 45A.343, the statute, KRS 45A.425, relating to the sale of surplus or excess property would apply.

KRS 45A.425 reads:

"(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 or 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."

Thus KRS 45A.425 must be followed where the fiscal court adopts those sections of the procurement code, as mentioned above. Under that statute the surplus property may be sold at public auction or by sealed bids in accordance with KRS 45A.365 (competitive sealed bids).

In the event that Lawrence Fiscal Court has not adopted the above mentioned sections of the Kentucky Model

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Procurement Code, then KRS 424.260 applies as to bidding. However, the latter statute covers only procurement, not sale of surplus property. In such case the fiscal court should observe the common law principle of having the property appraised by two competent appraisers and selling the property found to be surplus at not less than the appraised value.

This arises from the duty of a public officer to perform the duties "of his office honestly, faithfully, and to the best of his ability, in such a manner as to be above suspicion of irregularities, and to act primarily for the benefit of the public." 63 Am.Jur.2d, Public Officers and Employees, § 276, p.p. 791-792. A public officer is required to exercise "prudence, caution, and attention which careful men usually exercise in the management of their own affairs." Ibid., § 282, p. 795. Thus prudence and caution and sound management would dictate that such excess county property, if it is properly found to be excess, be disposed of at no less than the appraised value.

\*2 It has been held that the power to sell includes the power to lease. See Abernathy v. City of Irvine, Ky., 355 S.W.2d 159 (1962). However, your questions relate to sale.

Where KRS 45A.425 applies and is not followed, the courts might hold that the sale was invalid. See Handy v. Warren County Fiscal Court, Ky. App., 570 S.W.2d 663 (1978); and Board of Education of Floyd County v. Hall, Ky., 353 S.W.2d 194 (1962).

Sincerely,  
Steven L. Beshear  
Attorney General

By: Charles W. Runyan  
Assistant Deputy Attorney General

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