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December 12, 2011

Ms. Wanda Simons  
Laurel County Water District No. 2  
3910 South Laurel Road  
London, Kentucky 40744

Re: Laurel County Water District No. 2  
Water District Commissioners' Salary

**PSC STAFF OPINION 2011-0011**

Dear Ms. Simons:

Commission Staff acknowledges receipt of your letter of September 30, 2011, regarding the salaries of water district commissioners. I apologize for the delay in responding.

In your letter and subsequent conversations with Commission Staff, you presented the following facts:

Laurel County Water District No. 2, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that treat and distribute water to approximately 5,833 customers in Knox and Laurel Counties, Kentucky.<sup>1</sup> A five-member board of commissioners manages and administers the water district. Each commissioner is paid an annual salary of \$2,520.<sup>2</sup> One commissioner refuses to accept payment of his full salary.

Laurel District recently conducted a search of its files to locate evidence of Laurel County Fiscal Court approval of the current salary levels. The only evidence that water district officials discovered were the minutes of a Laurel County Fiscal Court meeting, which was held on March 24, 2011. The pertinent portion of these minutes read:

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<sup>1</sup> Annual Report of Laurel County Water District No. 2 to the Public Service Commission for the Year Ended December 31, 2010, at 5 and 27.

<sup>2</sup> *Id.* at 6.

Judge Westerfield stated that each year we are to recognize the state guidelines for the water companies to abide by. This hadn't been done in a few years, so the state called me and asked if we would recognize these guidelines. The state is the one who enforces these, and isn't governed by the county. Judge Westerfield asked for a motion to approve.

A motion to that effect was made and unanimously approved.

Your letter presents the following issues: (1) Whether the minutes of the March 24, 2011 meeting of Laurel County Fiscal Court are sufficient authorization for the salaries that Laurel District pays its commissioners and (2) Whether a water district commission may refuse payment of his salary.

As to the first issue, KRS 74.020(6) places the responsibility and authority for establishing the level of a water district commissioner's salary upon county judges/executive and fiscal courts. It provides in pertinent part:

In the case of single-county districts, which shall be deemed to include districts described in paragraph (c) of subsection (1) of this section, the salary shall be fixed by the county judges/executive with the approval of the fiscal court; in multicounty districts, it shall be fixed by the agreement between the county judges/executive with the approval of their fiscal courts. In fixing and approving the salary of the commissioners, the county judge/executive and the fiscal court shall take into consideration the financial condition of the district and its ability to meet its obligations as they mature.

The Laurel County Judge/Executive, therefore, with the approval of the Laurel County Fiscal Court would establish the level of compensation for Laurel District's commissioners.<sup>3</sup>

KRS 74.020(6) also establishes some limits upon a water district commissioner's salary. It provides for a maximum annual salary of \$3,600. If a commissioner completes six instructional hours of water district management training approved by the

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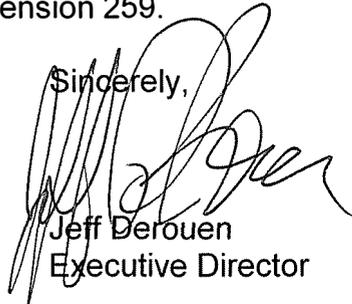
<sup>3</sup> Unless 25 percent or more of the total assets of Laurel District's distribution system lie in Knox County, Laurel District is a single-county district even though it provides water service in Knox County. Commission Staff has no information to indicate that this situation exists.

Public Service Commission, it allows for a maximum annual salary of \$6,000.<sup>4</sup> KRS 74.020(6), however, does not specify a minimum salary. Aside from establishing a maximum salary level, KRS Chapter 74 sets forth no guidelines or standards on salary levels.

Given that no state guidelines exist for water district commissioners' salaries, Commission Staff is of the opinion that the Laurel County Fiscal Court resolution referenced in your letter is insufficient authority to support the level of salaries that Laurel District currently pays its commissioners. Commission Staff recommends that Laurel District request specific authorization for this salary level. It further recommends that Laurel District consider requesting Laurel District to adopt a resolution ratifying the salary amount previously paid to Laurel District commissioners. The Attorney General has formally opined that such ratification is permissible.<sup>5</sup>

As to the second issue, a commissioner may not refuse to accept his or her salary. KRS 74.020(6) provides that each commissioner "shall receive an annual salary" as fixed by the county judge/executive and approved by fiscal court. Once compensation is fixed, it must be paid to the commissioner.<sup>6</sup> Once the salary is paid to a commissioner, he or she is free to dispose of it in any manner that he or she sees fit.

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 Gerald Wuetcher, Executive Advisor/Attorney, at (502) 564-3940, Extension 259.

Sincerely,  
  
Jeff Derouen  
Executive Director

Enclosures

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<sup>4</sup> These maximum levels apply only to salary and do not apply to other benefits, such as health insurance coverage, that a water district commissioner may also receive. See *Caldwell County Fiscal Court v. Paris*, 945 S.W.2d 952, 954 (Ky. App. 1997) ("compensation" and "salary" . . . mean the actual salary or fees paid to an officer"). See also *Hardin County Water District No. 1*, Case No. 2001-00211 (Ky.PSC Mar. 1, 2002) (salary limits do not prevent a water district from furnishing health insurance coverage to commissioners). Payment of fringe benefits may be included in salary if part of scheme "to raise the salary of a particular official through the subterfuge of paying certain benefits for him not uniformly available to similarly situated officials." *Caldwell County Fiscal Court* at 955.

<sup>5</sup> OAG 77-425.

<sup>6</sup> OAG 84-381; OAG 82-502. See also *City of Louisville v. Thomas*, 257 Ky. 540, 78 S.W.2d 767 (1935).