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July 9, 2012

Mr. Joe Bartley
General Manager
Meade County Water District
1003 Armory Place
Brandenburg, KY 40108

Re: Meade County Water District

PSC STAFF OPINION 2012-013

Dear Mr. Bartley:

Commission Staff acknowledges receipt of your request of June 18, 2012 for an opinion regarding an employment offer received by a member of Meade County Water District's ("Meade District") Board of Commissioners.

This letter responds to your request. It represents Commission Staff's interpretation of the law as applied to the facts presented. This Opinion is advisory in nature and not binding upon the Commission should the issues presented herein be formally presented for Commission resolution.

Commission Staff understands the facts as follows:

Meade District, a water district organized pursuant to KRS Chapter 74, owns and operates a water distribution system that serves approximately 4,186 customers in Meade County, Kentucky.¹ It does not produce its own water, but instead purchases its total water requirements from Hardin County Water District No. 1 ("Hardin District") and the city of Brandenburg, Kentucky.²

A board of commissioners, which is composed of five members, controls and manages Meade District's affairs. Wesley Prather, a member of that board, recently retired

¹ Report of Meade County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2010 at 5, 27.

² *Id.* at 29.

from his position with the Fort Knox Military Installation, which included responsibilities related to the operation of the Fort Knox Military Installation water treatment and distribution system.

Hardin District recently acquired Fort Knox Military Installation's water treatment and distribution system. It has made an offer of employment to Mr. Prather to serve as a consultant. If he accepts the offer, Mr. Prather will perform duties related to the operation of the recently acquired Fort Knox Military Installation water treatment and distribution system. He will not have any duties related to the Hardin District-Meade District water purchase contract. Mr. Prather has indicated that he wishes to accept the offer, but has stated that he will abstain from any matters that come before the Meade District Board of Commissioners involving Hardin County Water District.

Your letter presents the following question: As a member of Meade District's Board of Commissioners, is Mr. Prather prohibited from accepting employment with Hardin District?

Based upon the information provided, Commission Staff is of the opinion that Mr. Prather is not prohibited from accepting employment with Hardin District. First, the two positions are not legally incompatible. The position of water district commissioner is not considered to be a state, city or county officer for purposes of Section 165 of the Kentucky Constitution or KRS Chapter 61.³ Therefore, the prohibitions set forth in those laws are inapplicable.⁴

The offered position of employment and the position of water district commissioner do not appear to be structurally incompatible. Incompatibility of office exists when

"two offices are inherently inconsistent or repugnant, or when the occupancy of the two offices is detrimental to the public interest 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

³ OAG 82-635.

⁴ Section 165 of the Kentucky Constitution provides: "No person shall, at the same time, be a State officer or a deputy officer or member of the General Assembly, and an officer of any county, city, town, or other municipality, or an employee thereof; and no person shall, at the same time, fill two municipal offices, either in the same or different municipalities, except as may be otherwise provided in this Constitution; but a Notary Public, or an officer of the militia, shall not be ineligible to hold any other office mentioned in this section." KRS 61.080 establishes several offices that are incompatible. Water district commissioner is not listed among the offices.

occupancy of both offices is detrimental to the public interest.”

LaGrange City Council v. Halls Bros. of Oldham County, Inc., 3 S.W.3d 765, 769-770 (Ky. App. 1999). Since the positions involve separate water districts, they do not appear to be inconsistent or in conflict.

All county governments are required to establish and enforce a code of ethics.⁵ These codes, however, are not applicable to special districts, such as a water district, unless the governing board of the district expressly adopts the code.⁶ Therefore, assuming that Meade County Fiscal Court has adopted an ethics code that prohibits a county official from employment with a firm that provides goods or services to the official's agency, this code would not be applicable to Meade District unless Meade District specifically adopted its provisions. You have presented no information to suggest that Meade County Fiscal Court has enacted such a local ethics code or county ordinance or, that, if such code or ordinance had been enacted, Meade District had adopted it. You have further provided no information to suggest that Meade District has adopted its own code of ethics.

Notwithstanding the absence of an ethics code, water district commissioners are public officials.⁷ Certain common law duties are applicable to them. His office is considered a public trust.⁸ As a public official, a water district commissioner “may not use his or her official power to further his or her own interest and is not permitted to place herself or himself in a position that will subject him or her to conflicting duties - that is in a position where his or her private interest conflicts with his or her public duty - or cause him or her to act, or expose him or her to the temptation of acting, in any manner other than in the best interests of the public.”⁹

A water district's commissioner's failure to comply with this duty may result in his or her removal from office. KRS 74.020(2) provides that a water district commissioner may be removed from office for a conflict of interest.¹⁰ KRS 74.020(3) authorizes the

⁵ KRS 65.003.

⁶ *Louisville/Jefferson County Metropolitan Sewer District v. Schardein*, 259 S.W.3d 510 (Ky. App. 2008); OAG 94-71.

⁷ *Commonwealth v. Howard*, 379 S.W.2d 475 (Ky. 1964).

⁸ *Buchignani v. Lexington-Fayette Urban County Government*, 632 S.W.2d 465, 467 (Ky. App. 1982).

⁹ 63C Am. Jur. 2d *Public Officers and Employees* § 246 (May 2012).

¹⁰ KRS 74.020(2) provides: “A commissioner may be removed from office as provided by KRS 65.007 or 74.455.” KRS 65.007(1) provides in pertinent part: “Unless otherwise provided by state law, an appointed member of the governing body of a special district may be removed from office by the appointing authority after a hearing with notice as required by KRS Chapter 424 for inefficiency, neglect of duty, malfeasance or conflict of interest.

Mr. Joe Bartley
July 9, 2012
Page 4

removal of any "commissioner who participates in any official action by the water district board of commissioners which results in a direct financial benefit to him."

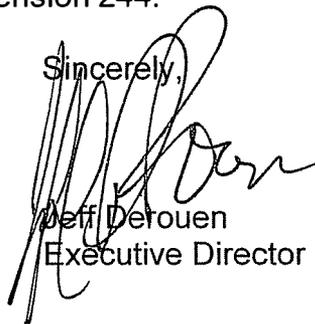
Should Mr. Prather accept the offered position with Hardin District, a potential conflict of interest would exist whenever Meade District's Board of Commissioners addresses any business transaction with Hardin District. As an employee of Hardin District, he would have an interest in protecting or advancing the interests of his employer. These interests may not coincide with the interests of Meade District.

While this potential conflict does not necessarily require his removal from Meade District's Board of Commissioners or his rejection of the employment offer, should Mr. Prather accept the employment offer, he should refrain from voting on or engaging in any discussions with other commissioners regarding matters involving Hardin District. Commission Staff further recommends that Mr. Prather not be physically present during any deliberations regarding matters involving Hardin District and that he not be provided any confidential materials regarding matters involving Hardin District. The minutes of any meeting of the Board of Commissioners in which matters involving Hardin District are discussed should expressly reflect Mr. Prather's non-involvement.

In summary, based upon the information provided, Commission Staff is aware of no statute that prohibits Mr. Prather from accepting the employment offer from Hardin District. Acceptance of the offer will create the opportunity for conflicts of interest. Accordingly, if the employment offer is accepted, Mr. Prather should refrain from participating in any matter or transaction involving Hardin District. Commission Staff further recommends that Meade District confer with its legal counsel to determine if any local ordinances or Meade District policy, by-law or resolution may apply to this factual situation.

Questions concerning this opinion should be directed to Helen C. Helton, General Counsel, at (502) 564-3940, Extension 244.

Sincerely,



Jeff Derouen
Executive Director

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