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Vice Chairman

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Commissioner

December 6, 2012

Thomas M. Jones, Esq.  
138 South Main Street  
Lawrenceburg, Kentucky 40342

Re: North Mercer Water District

**PSC OPINION NO. 2012-032**

Dear Mr. Jones:

Commission Staff acknowledges receipt of your letter of October 26, 2012 regarding the disposal of a water standpipe.

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.

In your letter, you provide the following facts:

North Mercer Water District ("North Mercer"), a water district organized pursuant to KRS Chapter 74, owns and operates facilities that distribute water to approximately 4,291 customers in Anderson, Boyle, Mercer and Washington Counties, Kentucky.<sup>1</sup> As of December 31, 2011, it had total assets of \$12,289,555 and net utility plant of \$11,218,270.<sup>2</sup>

The Mayo Tank is a water standpipe that is located near Talmage-Mayo Road in west central Mercer County, Kentucky. North Mercer purchased the property on which the Mayo tank is situated on November 5, 1982 and shortly

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<sup>1</sup> *Annual Report of North Mercer Water District to the Public Service Commission of Kentucky for the Calendar Year Ending December 31, 2011* at 5, 27.

<sup>2</sup> *Id.* at 7.

thereafter constructed the tank.<sup>3</sup> The Mayo Tank is constructed of steel, is approximately 100 feet tall and has a total storage volume of 130,000 gallons of water.<sup>4</sup> North Mercer normally maintained the tank's water level between 80 and 95 feet.<sup>5</sup>

North Mercer has in recent years engaged in a program to replace its older water storage facilities with larger and taller water storage tanks to provide more consistent water supply and pressures. Recent system improvements, including connections to South Anderson Water District and the City of Danville, Kentucky, have provided separate and independent sources of water for the area and reduced the need for the Mayo Tank.

North Mercer's engineer states that, because its current overflow elevation falls considerably below the system's hydraulic gradient, Mayo Tank has no value in providing reliable water service to North Mercer customers. To be of use, the standpipe's height must be increased. North Mercer's engineer states that such action cannot economically be taken due to foundation and site limitations.

North Mercer has removed all piping, valves, telemetry equipment and chlorination equipment from the storage facility. Its Engineer estimates that the cost of dismantling and disposing of the tank would be between \$15,000 and \$20,000.<sup>6</sup>

North Mercer has a one year lease agreement with a wireless internet service provider to use five water storage tank sites, including the Mayo Tank, to locate and service its transmitting equipment. It pays North Mercer \$500 monthly for these locations. The Mayo Tank, therefore, generates approximately \$1,200 in annual rental income for North Mercer. North Mercer's costs to maintain, insure, and protect the Mayo Tank are estimated to be \$10,000 annually.

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<sup>3</sup> Resolution of North Mercer Water District's Board of Commissioners Relating to Disposal of Excess Property (Oct. 17, 2012) ("Resolution") at 1.

<sup>4</sup> See <http://wris.ky.gov/portal/DwSysData.aspx?PNum=KY0840321> (last visited Dec. 4, 2012).

<sup>5</sup> Resolution at 1.

<sup>6</sup> Letter from Ronald E. Gastineau, Professional Engineer, to Gerald Sheperson, Chairman, North Mercer Water District (Aug. 15, 2012).

North Mercer's Board of Commissioners has determined that the Mayo Tank is surplus property and should be conveyed to the best buyer.

Based upon these facts, you present the following question: Is Commission approval of the proposed disposal of the Mayo Tank required?

As the asset in question is not used in the generation, production, transmission, or distribution of electricity and as the Commission has not imposed any condition upon North Mercer regarding the disposal of surplus assets, Commission Staff is of the opinion that Commission approval of the proposed sale of the Mayo Tank is not required. Public Service Commission approval of a utility's disposal of surplus property is generally not required. KRS 278.218 requires prior Commission approval of the transfer of ownership or control of assets used in the generation, production, transmission, or distribution of electricity if the asset's original book value exceeds \$1,000,000 and certain other conditions exist. Such requirement may also be imposed as a condition for Commission approval of the transfer of ownership or control of a utility when the Commission determines such condition is in necessary for the public interest.<sup>7</sup>

In your letter, you do not indicate whether North Mercer has adopted the Local Model Procurement Code. Commission Staff advises North Mercer that, if it has adopted that code, it should follow KRS 45A.425 for the sale and disposal of surplus property. For your reference, I have enclosed Attorney General Opinion 77-399 regarding a water district's disposal of surplus property and Attorney General Opinion 82-8 regarding a local government's disposal of surplus property when the Local Model Procurement Code is not applicable.

Questions concerning this opinion should be directed to Gerald Wuetcher, Executive Advisor, at (502) 782-2590.

Sincerely,



Jeff Derouen  
Executive Director

Enclosures

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<sup>7</sup> See KRS 278.020(6).

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 82.060.

Charles W. Runyan  
Asst. Dep. Atty. Genl

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

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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8

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