COMMONWEALTH OF KENTUCKY
OFFICE OF THE ATTORNEY GENERAL
FRANKFORT

ROBERT MATTHEWS
ATTORNEY GENERAL

October 18, 1965

Mr. Stallard Smith
Court House
Shelbyville, Kentucky

OAG65 754

Dear Mr. Smith:

This is in answer to your letter in which you request an opinion on behalf of a water district commissioner concerning the question of whether or not a commissioner of a particular water district can serve at the same time as superintendent of the water district, or as an employee of the district for the purpose of obtaining easements or to sign customers.

The question raised involves a possible conflict of interest or a common law incompatibility.

Water districts operate under Chapter 74 KRS and are governed by commissioners appointed pursuant to KRS 74.020. Under KRS 74.040 it is provided that the commissioners may appoint a competent person as superintendent of the water district. This statute further provides that the superintendent shall be subject to the orders of the commission and with its consent, he may employ all necessary labor and assistance in the performance of his duties. Under the referred to statute a commissioner, though he may initially refrain from voting on his own appointment or upon his approval as an employee, nevertheless in order to function properly as a commissioner, would be involved in directing the superintendent with respect to his duties which, in effect, relate to the overall management of the district. In other words, the fact that the commissioner would refrain from voting on his own appointment would, we believe, be of little significance in considering the overall aspects of the question.

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The Court of Appeals in the case of Hermann v. Lampe, 175 Ky. 109, 194 S.W. 122 (1917) has laid down certain principles relating to common law incompatibility involving an office and employment. The court, in this instance, said:

> " . . . The inconsistency, which at common law makes offices incompatible, does not consist in the physical impossibility to discharge the duties of both offices; but rather in a conflict in interest, as where the incumbent of one office has the power to remove the incumbent of another, or to audit the accounts of another, or to exercise a supervision over another, as in the case of a judicial officer and his subordinate ministerial officer."
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> . . . . . .
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> "Officers are said to be incompatible and inconsistent so as to be exercised by the same person: 1st. When from the multiplicity of business in them they can not be executed with care and ability; or, 2nd, When their being subordinate and interfering with each other, it induces a presumption that they can not be executed with impartiality and honesty."

Under the circumstances there is a strong possibility that the second common law incompatibility rule quoted from the above case would be applicable to the facts in question. However, aside from this the common law rule of contracting against interest must also be considered. In this respect we refer initially to McQuillin Corporations, Vol. 10, § 29.97 which refers to the following general rule:

> "It is generally held that whenever a public officer enters into a contract the execution of which may make it possible for his personal in-

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terests to become antagonistic to his faithful discharge of a public duty, such contract will be held void as against public policy."

It also follows under the same section that:

"It is well settled that municipal officers cannot be interested in contracts of any character with the municipality. This rule has been adopted to a considerable extent in the various jurisdictions by statutory or charter provisions which are merely declaratory of the rule at common law."

Though it is, of course, a question for the courts to decide, we nevertheless believe that it would be against public policy for a district commissioner to serve as superintendent or employee of a water district.

Yours very truly,

ROBERT MATTHEWS
ATTORNEY GENERAL

By
Walter C. Herdman
Assistant Attorney General

WCH:rfh

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October 6, 1965

Ref 65/154

Mr. Stallard Smith
Court House
Shelbyville, Kentucky

Dear Stallard:

Over half of the 100 water districts operating in Kentucky have hired a district commissioner to act as superintendent of the waterworks or to obtain easements for the district or sign customers.

The district commissioner involved has disqualified himself and not voted on the contract hiring him.

I think these people should be protected by an opinion from the Attorney General that it is not illegal for a water district commissioner to serve as an employee of the district on terms fixed by the district so long as there is a complete disclosure of the facts spread on the minutes of the district and the involved commissioner disqualifies himself from voting on his own employment.

Yours very truly,

Tom Underwood, Jr.

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