

COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL  
FRANKFORT

ROBERT MATTHEWS  
ATTORNEY GENERAL

May 19, 1966

Hon. James S. Secrest  
County Attorney, Allen County  
P.O. Box 35  
Scottsville, Kentucky

OAG66 315

Dear Jim:

This is in answer to your letter of May 13 in which you state that as County Attorney you have performed the necessary legal services for the establishment of the North Allen Water District. The District Commissioners now, however, desire to employ you as their counsel for the purpose of financing the district and any other services that the Commission may need, including the filing of condemnation suits, if necessary. At the same time they desire to compensate you for these services as they would be required to do when employing private counsel. Under the circumstances you desire to know whether or not you can accept employment as private counsel for the water commission and receive compensation therefor (but not for services heretofore rendered in establishing the district) notwithstanding the fact that you are also the County Attorney.

In answering your question we refer to KRS 74.030 which provides as follows:

"The county attorney shall act as counsel to the water commission, except that the commission may, subject to approval of the court, employ counsel whose compensation shall be paid from water district funds."

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The above referred to statute clearly indicates that the county attorney shall act as counsel for the water commission without containing any qualifications concerning the work to be performed by him, though it does provide that the commission may employ private counsel when it deems necessary to do so. From the wording of the statute it would appear that the county attorney must at least continue to advise the commission on all legal matters, but may be assisted by special counsel employed by the commission, in the performance of duties that possibly consume a considerable amount of time, such as the financing of the district and the institution of condemnation suits. This being the case we do not believe that the commission can employ the county attorney as private counsel and pay him accordingly and at the same time receive his services free as part of his duties as county attorney, which could very well include the extraordinary services to which you refer. This conclusion is primarily based upon the fact that the statute does not qualify to any degree the duties that are to be performed by the county attorney.

We also note OAG 42,590, a copy of which we are attaching, wherein the question was raised as to whether or not a county attorney would be entitled to compensation from the funds of a water district for his services to the district. It also cited KRS 74.030 and concluded that since the statute specifically designates that the county attorney shall represent the water district in his official capacity he would not be entitled to extra compensation, but must perform the duties as part of his office.

Yours very truly,

ROBERT MATTHEWS  
ATTORNEY GENERAL

By

Walter C. Herdman  
Assistant Attorney General

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