

RECEIVED  
APR 20 2007  
GENERAL COUNSEL

COMMONWEALTH OF KENTUCKY  
OFFICE OF THE ATTORNEY GENERAL  
FRANKFORT

ROBERT MATTHEWS  
ATTORNEY GENERAL

December 22, 1967

0 A667 544

Mr. R. B. Standiford, Chairman  
Western Fleming County Water District  
Ewing, Kentucky 41039

Dear Sir:

This is in answer to your letter of December 12 in which you state that Western Fleming County Water District recently lost by a Court of Appeals' decision the right to serve a subdivision in which the Water District presently owns certain water lines. The City of Flemingsburg now wants to buy these particular water lines and the District wants to sell them to the City. You ask if the District has legal authority to sell its water line facilities to the City of Flemingsburg if the steps outlined in Section 9 of the Water District's bond ordinance are followed. The bond ordinance reads in part as follows:

"Said District and its Commission hereby irrevocably covenant bind and obligate themselves not to sell, lease, mortgage or in any manner dispose of any of the system facilities or any part thereof until all of said bonds shall have been paid in full...and further covenant and agree with the holders of said bonds to maintain in good condition and continuously operate said project and appurtenances....

"Notwithstanding the foregoing, the District may, at any time, for compensation permanently abandon the use of or sell at fair market value any of its water distribution system facilities provided that: A.(b) It will, in the event of sale, apply the proceeds to either (1) redemption

67-544

"of outstanding bonds in accordance with the provisions governing repayment of bonds in advance of maturity, or (2) replacement of the facility so disposed of by another facility the revenues of which shall be incorporated into such water distribution system as hereinbefore provided..."

The Court of Appeals in City of Flemingsburg v. Public Service Commission and Western Fleming County Water District, Ky., 411 S.W.2d 920 (1967), stated that the Western Fleming County Water District had no right to serve the John Taylor Subdivision which was annexed in 1964 by the City of Flemingsburg. The District had sold revenue bonds upon the strength of the Public Service Commission's order granting it the right to serve this area and had constructed facilities in anticipation of serving the Taylor Subdivision. The Court remarked in its opinion:

"The impelling need for cooperation suggests that appropriate steps be taken by cities and water districts looking toward a mutually advantageous resolution of their problems..."

KRS 74.070 provides that the water district commission shall be a body corporate for all purposes and shall make contracts for the water district with municipalities and persons for a water supply. The bond ordinance expressly provides that the district may sell at fair market value any of its water distribution system facilities provided that it will, in the event of sale, apply the proceeds to redemption of outstanding bonds in accordance with the provisions governing repayment of bonds in advance of maturity.

It is our opinion that the Western Fleming County Water District has legal authority to sell the particular water lines mentioned in your letter if it follows the steps outlined in Section 9, subsection A(b), of the District's bond ordinance.

Very truly yours,

ROBERT MATTHEWS  
ATTORNEY GENERAL

By

John B. Browning  
Assistant Attorney General