

OAG 69-562

PUBLIC SERVICE COMMISSION - Definitions
WATER DISTRICTS - Commission, powers and duties

SYLLABUS: Water district cannot regulate private or independent sewage systems under KRS Ch. 74.

To: Robert F. Greene, Atty. at Law, Three West Washington Street,
Burlington, Ky.

By: Charles W. Runyan, Asst. Atty. Genl., October 22, 1969

This is in response to your recent letter concerning Interim Rules for Sewage Disposal issued by the Boone County Water District. The Water District plans to acquire or develop a sewage disposal system pursuant to KRS 74.407, which statute reads:

"In addition to the other authority which water districts presently have under this chapter, water districts are hereby authorized to acquire, develop, maintain and operate sewage disposal systems within the confines of their respective districts except that such sewer systems shall not include territory within the boundaries of existing municipal corporations having the authority to provide such sewer services without the consent of such municipal corporations. In the event of annexation of territory within a water district by another municipal corporation authorized to provide sewer systems and services, the water district may continue to provide and charge for sewer services within such newly annexed areas until such annexing municipal corporation makes adequate payment, by negotiation or condemnation, for such sewage disposal facilities owned and operated by the water district. The water district commissioners shall have all of the powers and authority, as regards sewer systems that are conferred upon them for the purpose of furnishing a water supply under KRS 74.010 to 74.390."

In your letter to the Public Service Commission of 30 September 1969 you stated that it is essential to the Master Plan [a plan made for the Water District and covering sewage disposal systems in the District area] that the Boone County Water District exercise control over the development of any sanitary sewer system in the District. You apparently concluded that, from KRS 74.407 and 74.408, the District is authorized to develop sewage disposal systems, and that incidental to and as a part of such development it may exercise reasonable control over the establishment of privately developed sewer systems within the Water District area. Thus you concluded that the Water District had the authority to promulgate interim regulations concerning sewage disposal. This was based upon your interpretation of the statutes mentioned above and upon the fact that the abundant water supply of the District would aggravate the existing sewage disposal problem.

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You, as General Counsel for the District, attempted to file certain Interim Rules for Sewage Disposal with the Public Service Commission. The regulations purport to apply to all persons who may construct sanitary sewers in the District area prior to the District's actually acquiring or constructing a district sewage system and furnishing sewage disposal service. The rules, in short, purport to regulate the construction of private or independent sewage systems within the District and make them conformable to the District's Master Plan.

The Public Service Commission reviewed the District's sewage regulations or tariff filing and expressed the opinion that the provisions of the filing went beyond its regulatory jurisdiction. The P.S.C. therefore rejected the filing.

Your question is whether the attempt of the District to regulate the construction of private or independent sewage disposal systems within the District area, prior to the acquisition, construction, or installation of a water district sewage disposal system, was valid, such that the regulatory authority of the P.S.C. over utilities [see KRS 278.010(3) Supp. 1968) and 278.015] may be properly invoked.

It is clear that the Water District can acquire and operate a sewage disposal system under KRS 74.407. Also see KRS 74.408. However, in your situation the sewage service or function has not commenced. It is merely in the planning stage. The Water Commission has broad corporate powers under KRS 74.070. The Water Commission may establish water rates and make reasonable regulations for the disposition and consumption of water. When we read KRS 74.407 and 74.080 together, we find that the Water District may establish rates and reasonable regulations for the sewage function.

It is our opinion, however, that KRS 74.407, and other pertinent sections in that chapter, contemplate the District's furnishing or supplying sewage disposal facilities, which would entail the acquisition, construction, and operation of a water district sewage disposal system. Prior to the time that the District's sewage function (as just described) commences, it is our view that the Water Commission has no authority to regulate or control private or independent sewage systems in the District area. The Water Commission has authority to control only its own sewage system. Even after a water district sewage system is installed, the Water Commission can then only regulate its own system, but not private or independent systems in the District area.

We realize your concern about pre-planning before the District's system is installed; however, we are unable to find any statutory basis for interim regulations of the type your District has promulgated. In construing statutes [here KRS Ch. 74] we are to give effect, if it be possible to do so, to every word, clause and sentence of a statute. The same rule applies in construing different relative statutes. *Commonwealth v. Harris*, 278 Ky. 218, 128 S.W.(2d) 579 (1939). An analysis of the various statutes relating to furnishing water and sewage service in KRS Ch. 74 leads us to conclude that the District's regulations, concerning water and sewage, can extend

only to its own water and sewage facilities. Thus we think the P.S.C. properly rejected your tariff filing (Interim Regulations) as being beyond its regulatory jurisdiction. See KRS 278.015.

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WILLS - Evidence, admissibility as; probate, jurisdiction

SYLLABUS: A will probated in the county of testatrix's residence can only be recorded in such county.

To: Verner Smith, 175 Sioux Drive, Lexington, Ky.
By: Charles W. Runyan, Asst. Atty. Genl., October 20, 1969

According to your recent letter the will of your sister, Myrtle Smith Adkins, was admitted to probate and ordered to be recorded on 21 September 1963 by the Fayette County Court. The testatrix in her will declared that she was a resident of Lexington, Fayette County, Kentucky. KRS 394.140 (Supp. 1968) provides that wills shall be proved before, and admitted to record by, the county court of the testator's residence. In any event we assume that the testatrix was a resident of Fayette County at the time of her death. You were appointed as administrator of her estate with will annexed.

In this state the county court of the testator's residence is given the original and exclusive jurisdiction to probate wills by reason of KRS 394.140. See *Allen v. Lovell's Adm'x.*, 303 Ky. 238, 197 S.W.(2d) 424 (1946).

You ask whether the county court clerk in Wolfe County is required to record the will in that county on the ground that the testatrix owned land in Wolfe County.

"A judgment probating a will by a court having jurisdiction, being a proceeding in rem, is conclusive as to the due execution and validity of the will and is binding not only on the heirs of the testator but on all the world." *Strother v. Day*, Ky., 279 S.W.(2d) 785 (1955). See also *Davies v. Leete*, 111 Ky. 659, 64 S.W. 441 (1901). Further, KRS 394.130 provides that the probate of a will before the county court shall be conclusive, except as to the jurisdiction of the court, until superseded, reversed or annulled. Thus, "A judgment of probate in a county court having jurisdiction is conclusive unless set aside on appeal to the circuit court or by such other method of direct attack as may be expressly authorized." *Payne v. Chenault*, Ky., 343 S.W.(2d) 129 (1961).

Under the facts presented to us, we believe that KRS 394.140 is controlling and that there is no statutory authority requiring the county clerk of Wolfe County to record such will.