

Ky. OAG 78-651, 1978 WL 26206 (Ky.A.G.)

*1 Office of the Attorney General

Commonwealth of Kentucky

OAG

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September 12, 1978

Honorable Virgil Pearman
State Representative
26th District
Capitol Building
Frankfort, Kentucky 40601

Dear Representative Pearman:

A question has arisen in Hardin County about the possible incompatibility of offices where a member of the fiscal court serves on the board of commissioners of a water district organized and created under KRS Chapter 74.

As you mention, in OAG 67-68, we concluded that the holding of office of county judge and commissioner of a water district at the same time would involve a common law incompatibility and would be illegal.

Under [KRS 74.020](#), as amended by H.B. 607 [Ch. 384, 1978 Acts, Section 181], the water board commissioners are appointed by the county judge/executive, with the approval of the fiscal court. The salary of the water commissioners are fixed by the county judge/executive, with the approval of the fiscal court. Under [KRS 74.010](#), as amended in 1978, the county judge/executive has a discretion in executing an order creating a water district. He has a similar discretion in the discontinuance of the district. [KRS 74.367](#), as amended in 1978. He has such

discretion in enlarging or diminishing the territory of a water district. [KRS 74.110](#), as amended in 1978.

It is our opinion, under the current statutes mentioned, that a county judge/executive cannot legally serve at the same time as a water board commissioner, since that would involve a common law incompatibility. Offices are said to be incompatible as a matter of common law when, their being subordinate and interfering with each other, it induces a presumption that they cannot both be executed with impartiality and honesty. [Hermann v. Lampe, 175 Ky. 109, 194 S.W. 122 \(1917\)](#). The central point here is the relation of one office to the other. It simply would be against public policy for the county judge/executive, who plays such a central role in connection with water districts, to appoint himself as a water commissioner [though the fiscal court has to approve] and serve as water commissioner. Public policy demands that a public officer must be able to deal objectively with the public's business. [Barkley v. Stockdell, 252 Ky. 1, 66 S.W.2d 43 \(1933\)](#) 44; and [Commonwealth v. Withers, 266 Ky. 29, 98 S.W.2d 24 \(1936\)](#) 25, 26.

It is also our opinion that none of the other members of fiscal court [that is, the magistrates or commissioners on the fiscal court] can legally serve as commissioners of a water board. The reason is the same as given above in connection with the county judge/executive. The holding of the two posts would involve a common law incompatibility and would be against public policy. The fiscal court would be finally approving the appointment of one of its members as a water commissioner and approving the salary thereof. The fiscal court would simply not be able to deal objectively with the water commissioner subject.

*2 The holding of the two posts would not involve a constitutional or statutory incompatibility, since the water district is a separate political subdivision. [Louisville Extension Water Dist. v. Diehl Pump & Supply Co., Ky., 246 S.W.2d 585 \(1952\)](#). Cf. [§ 165](#),

[Kentucky Constitution](#), and [KRS 61.080](#).

Sincerely,
Robert F. Stephens
Attorney General

By: Charles W. Runyan
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