1984 Ky. Op. Atty. Gen. 2-179, Ky. OAG 84-148, 1984 WL 185799 (Ky.A.G.)

***1** Office of the Attorney General

Commonwealth of Kentucky

OAG 84-148

April 19, 1984

Mr. Bill Abner
Executive Director
Harlan County Urban Renewal and Community Development Agency
P. O. Box 792
Harlan, Kentucky 40831

Dear Mr. Abner:

This is in reply to your letter raising two questions, the first of which asks whether a person must accept public water services in a rural unincorporated area of the county from a water district. Your second question asks if, under the same circumstances, a hookup to the sewage disposal system is mandatory.

Presumably the water district in question was organized and now functions pursuant to the terms and provisions of KRS Chapter 74. KRS 74.010(2) provides in part that a water district shall be established if the county judge/executive, upon the submission of the proper petition, finds that the establishment of the district is reasonably necessary for the public health, convenience, fire protection and comfort of the residents. KRS 74.070 states in part that the water district commission shall be a body corporate for all purposes and may do all acts necessary to carry on its authorized work.

The court in the case of Ryan v. Commissioners of Water Dist. No. 1 of Kenton County, 220 Ky. 822, 295 S.W. 1023 (1927), upheld the validity of an act authorizing the creation of a water district "for the purposes of preserving and promoting the public health, convenience and welfare, and to provide fire protection to the citizens of any county in the state."

In OAG 70-683, copy enclosed, this office said there is no specific authority authorizing a water district to compel property owners to connect with its water system. We further stated it is possible that under the police power of the water district (a political subdivision of the state) property owners could be compelled to connect to and use the system where the public health and welfare is involved.

There still is no specific statutory provision or judicial decision in this state dealing with the authority of a water district to compel property owners to connect to its water system. However, in McQuillin, Mun. Corp. (3rd Ed.), Vol. 12, 1983 Cumulative Supplement, § 35.35 (p. 51), it is stated that "Municipal power to protect the public health and general welfare of its residents is broad enough to authorize a city to compel landowners, including those with private wells, to connect with the municipal water system."

In McMahon v. City of Virginia Beach, 221 Va. 102, 267 S.W.2d 130 (1980), cert. denied 101 S.Ct. 361, 449 U.S. 954, 66 L.Ed.2d 219, the court said the city could by ordinance require landowners who possessed adequate supplies of potable water provided by their privately owned wells to connect with the municipal water supply system even though the ordinance does not require them to use city water. At page 134 of its opinion in McMahon, supra, the court said in part:

> ***2** "...A local governing body must necessarily enjoy broad discretionary powers to protect the public health and general welfare of its residents. To anticipate seemingly unlikely events, such as those included in Stipulation K, [FNa] as public health hazards may be to exercise commendable prudence and foresight. There is

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> no requirement that protective measures be limited to actions taken after a crisis has arisen or a catastrophic disaster has struck. Although Code § 15.1-873 designates other purposes which may justify the enactment of a mandatory connection ordinance pursuant to Code § 15.1-875, we find the public health purpose alone sufficient to support the conclusion that the present ordinance constitutes a valid exercise of the City's police power."

Although the question has apparently not been decided by the courts in this state, it is our opinion that a water district organized pursuant to the provisions of KRS Chapter 74 (a political subdivision of the state concerned with the public health, convenience and comfort of the inhabitants) could probably require property owners within its service area to hook up to its water distribution system in the interest of public health, safety and welfare.

In response to your second question, a water district is, pursuant to KRS 74.407, authorized to operate a sewage disposal system and, as stated in OAG 70-683 at page two, the water district could require the property owner to connect to its sewage disposal system under the same authority available to a municipal corporation.

Sincerely,
David L. Armstrong
Attorney General

Thomas R. Emerson
Assistant Attorney General

[FNa]. Included in Stipulation K were the following statements which the stipulation admitted were unlikely to occur:

> 1) Subsurface wells could at any time become polluted without prior knowledge of the city or the plaintiffs while the city water system is routinely monitored for water quality.
> 2) A prolonged water table decline could make plaintiffs' wells inoperable.
> 3) A prolonged lack of electricity would render plaintiffs' wells useless.
> 4) A significant drawdown of ground water might create a salt water intrusion in the plaintiffs' wells.

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