

1984 Ky. Op. Atty. Gen. 2-310, Ky. OAG 84-279,
1984 WL 185679 (Ky.A.G.)

*1 Office of the Attorney General

Commonwealth of Kentucky

OAG 84-279

August 8, 1984

Hon. C. F. Haley, Jr.
Bullitt County Judge/Executive
Courthouse
Shepherdsville, Kentucky 40165

Dear Judge Haley:

This is in response to your letter of July 20 in which you initially request an opinion as to whether or not a member of a county water district can also serve as mayor of a newly established city of the sixth class which is located within the boundaries of the district.

Our response to the above question would be in the affirmative. A county water district is a political subdivision of the Commonwealth as we have previously held in a number of opinions which are based on the case of [Louisville Ext. Water Dist. v. Diehl, Ky. 246 S.W.2d 585 \(1952\)](#). As a consequence, a member of the water district commission would not be considered a state, county or city officer within the meaning of [Section 165 of the Constitution](#) and [KRS 61.080](#). Thus, in view of the fact the water district is a hybrid agency, there would be no constitutional or statutory conflict were a member of the commission to also serve as mayor of the city in question. Of course, if any business develops between the water district and the city, the mayor would be required to refrain from participating in or voting on the matter. Also, all sixth class cities are required as you know to be composed of four commissioners and the mayor,

which constitutes the commission form of government. See [KRS 83A.020](#).

Your second question is whether a member of the water district must reside in the district of which he is a member. You relate that a member of the district lives outside of the district. However, he operates a place of business within the boundaries of the district. You further relate that where this individual presently lives was a part of the district at one time but was severed from the district approximately four years ago by the county judge/executive.

Where the water district lies solely within a single county, the board of commissioners shall consist of three residents of the district or of any incorporated or unincorporated area served by the district in the county in which the district was originally established. See [KRS 74.020\(1\)\(a\)](#).

This statute clearly requires commissioners appointed by the judge/executive to be legal residents of the district. The question of whether they are legal residents, however, is sometimes difficult to determine since it is based on the individual's intent and factual evidence to back up such intent. See [Dunn v. Hamilton, 233 Ky. 663, 26 S.W.2d 526 \(1930\)](#). There is a rule, however, mentioned in [KRS 116.035](#) to the effect that the place where the family of a married man resides shall generally be considered his residence unless the family so resides for a temporary purpose. Also, if his family is permanently in one place and he transacts his business in another, the former shall be his residence. Thus the question of whether or not the water district commissioner no longer legally lives within the district or area serviced by the district, and thus is no longer a qualified commissioner, residency wise, is a factual matter that only the court can determine.

*2 In any event, and in answer to your third question, as long as the commissioner continues to serve as such under color of title, his acts are valid and continue to be so until removed from office. See [Commonwealth v. Winstead, Ky., 430 S.W.2d 647](#)

[\(1968\)](#).

Sincerely,
David L. Armstrong
Attorney General

Walter C. Herdman
Asst. Deputy Attorney General

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