

KRS Chapter 106

Acquisition of Water Works by Cities and Water Districts

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106.010 Authority of water districts and cities not of the first class to acquire and operate waterworks.

Any water district created pursuant to KRS Chapter 74 or any city of the second, third, fourth, fifth or sixth class may, by purchase or by condemnation, acquire, establish, erect, maintain and operate waterworks, together with extensions and necessary appurtenances thereto, and including both real or personal property within or without the corporate limits of the said water district or city, for the purpose of supplying the water district or the city and its inhabitants thereof with water.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 1, effective June 17, 1954.

106.020 Authority to acquire sewerage system with water system.

A sewerage system may be acquired with a water system and joined in one (1) project with the water system for the purpose of original financing.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 2, effective June 17, 1954.

106.030 Provisions of chapter are alternative.

This chapter shall not affect the provisions of any other laws providing any alternate plan for the acquisition and operation of water systems.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 3, effective June 17, 1954.

106.040 Agreement as to purchase price of waterworks.

The water district commissioners of water districts or the legislative body of any of the aforesaid cities may agree with the owner or owners as to the value of said waterworks and purchase it at such value.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 4, effective June 17, 1954.

106.050 Authority to borrow money and issue bonds.

For the purpose of defraying the cost of acquiring by condemnation, purchase or construction any such waterworks, including real and personal property of same and appurtenances or extensions thereto, the water district or the city may borrow money and issue negotiable bonds, but only after a resolution has been adopted by the water district commissioners or an ordinance has been adopted by the legislative body of the said city specifying the proposed undertaking, the amount of bonds to be issued and the maximum rate of interest the bonds are to bear.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 5, effective June 17, 1954.

106.060 Interest and payment of bonds.

Bonds may be issued bearing interest at a rate or rates or method of determining rates, payable at least annually, and shall be executed in a manner and be payable at times not exceeding forty (40) years from the date of issue, and at a place or places as the water district commissioners or the city legislative body determines.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 274, sec. 29, effective July 15, 1996. -- Created 1954 Ky. Acts ch. 18, sec. 6, effective June 17, 1954.

106.070 Bonds negotiable -- Sale -- Nonliability of city.

Bonds issued pursuant to this chapter shall be negotiable and shall not be subject to taxation. If any officer whose signature or countersignature appears on the bonds or coupons ceases to be an officer before delivery of the bonds, his signature or countersignature shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until delivery. The bonds shall be sold in a manner and upon terms as the water district commissioners or the city legislative body deems for the best interest of the water district or city, or any contract for the purchase or acquisition of any waterworks may provide that payment shall be made in bonds. The bonds shall be payable solely from the revenue funds derived from the waterworks and shall not constitute an indebtedness of the city within the meaning of the Constitution. It shall be plainly stated on the face of each bond that it does not constitute an indebtedness of the city within the meaning of the Constitution.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 274, sec. 30, effective July 15, 1996. -- Created 1954 Ky. Acts ch. 18, sec. 7, effective June 17, 1954.

106.080 Proceeds of bonds not to be diverted -- Lien on waterworks property.

All moneys received from the bonds shall be applied solely for the purchase by agreement or condemnation or establishment or erection of the waterworks and extensions and appurtenances thereto, or to advance the payment of the interest on the bonds during the first three (3) years following the date of the bonds. A statutory mortgage lien shall exist upon the waterworks and appurtenances and extensions so acquired in favor of the holders of the bonds and coupons.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 8, effective June 17, 1954.

106.090 Remedies of bondholders.

The waterworks so acquired, together with the extensions and appurtenances, shall remain subject to the statutory lien until the payment in full of the principal and interest of the bonds. Any holder of the bonds or coupons may, by action at law or in equity, protect and enforce the lien and enforce and compel performance of all duties required by this chapter, including the making and collecting of sufficient rates, the segregation of the income and revenue, and the application thereof.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 9, effective June 17, 1954.

106.100 Procedure in case of default.

If there is any default in the payment of the principal and interest of any bond, any court having jurisdiction of the action may appoint a receiver to administer the waterworks on behalf of the water district or city, with power to charge and collect rates sufficient to provide for the payment of any bonds or obligations outstanding against the waterworks and for the payment of the operating expenses, and to apply the income and revenue in conformity with the provisions of this chapter and in conformity with the resolution adopted by the water district commissioners or the ordinance adopted by the city legislative body as hereinbefore set out.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 10, effective June 17, 1954.

106.110 Pledge of income and revenue -- Form of resolution or ordinance.

At or before the issuance of the bonds the water district commissioners shall, by resolution, or the city legislative body shall, by ordinance, set aside and pledge the income and revenue of the waterworks into a separate and special fund to be used and applied in payment of the cost thereof and in the maintenance, operation and depreciation thereof. The resolution or ordinance shall definitely fix and determine the amount of revenue necessary to be set apart and applied to the payment of the principal and interest of the bonds, and the proportion of the balance of the income and revenues to be set aside as a proper and adequate depreciation account, and the remaining proportion of such balance shall be set aside for the reasonable and proper operation and maintenance of the waterworks. The rates to be charged for service from the waterworks shall be fixed and revised from time to time so as to be sufficient to provide for payment of interest upon all bonds and to create a sinking fund to pay the principal thereof when due, and to provide for the operation and maintenance of the waterworks and an adequate depreciation account.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 11, effective June 17, 1954.

106.120 Transfer of surplus in operating and maintenance funds to depreciation account.

If a surplus is accumulated in the operating and maintenance funds equal to the cost of maintaining and operating the waterworks during the remainder of the calendar, operating or fiscal year and during the succeeding like year, any excess over such amount may be transferred at any time by the water district commissioners or city legislative body to the depreciation account, to be used for improvements, extensions or additions to the waterworks.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 12, effective June 17, 1954.

106.130 Expenditure of depreciation account funds.

The funds accumulating to the depreciation account shall be expended in balancing depreciation in the waterworks or in making new constructions, extensions or additions thereto. Any such accumulations may be invested as the water district commissioners or city legislative body may designate and if invested the income from such investments shall be carried into the depreciation account.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 13, effective June 17, 1954.

106.140 City to pay charges for waterworks service.

The reasonable cost and value of any service rendered to the city by the waterworks may be charged against the city and shall be paid for monthly as the service accrues from the current funds or proceeds of taxes which the city shall levy in an amount sufficient for that purpose. The funds so paid shall be accounted for in the same manner as other revenues of the waterworks.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 14, effective June 17, 1954.

106.150 Funding bonds.

The water district or city may issue new bonds to provide funds for the payment of any outstanding bonds, in accordance with the procedure prescribed by this chapter. The new bonds shall be secured to the same extent and shall have the same source of payment as the bonds refunded.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 15, effective June 17, 1954.

106.160 Additional bonds.

If the water district commissioners or city legislative body finds that the bonds authorized will be insufficient to accomplish the purpose desired, additional bonds may be authorized and issued in the same manner.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 16, effective June 17, 1954.

106.170 Additional bonds for extensions and permanent improvements.

Any water district or city acquiring any waterworks pursuant to the provisions of this act may, at the time of issuing the bonds for such acquisition, provide for additional bonds for extensions and permanent improvements to be placed in escrow and to be negotiated from time to time as proceeds for that purpose may be necessary, or the water district or city may, at any time, provide for the extension, addition or improvement of the waterworks by an additional issue of bonds. Bonds placed in escrow shall, when negotiated, have equal standing with the bonds of the same issue.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 17, effective June 17, 1954.

106.180 Authority to provide for administration and security of bondholders.

The water district commissioners of a water district may provide by resolution or the city legislative body may provide by ordinance such provisions and stipulations for the administration of the income and revenues of the waterworks and for the security of the bondholders as it deems necessary.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 18, effective June 17, 1954.

106.190 Setting aside of fund equal to amount of secured debt or charge.

The resolutions or ordinances required by this chapter may set apart a fund equal to the amount of any secured debt or charge subject to which a waterworks is acquired, and shall set aside to that fund, from the balance of the income and revenues of the waterworks remaining after setting aside the funds for payment of principal and interest of bonds, a sum sufficient to comply with the requirements of the instrument creating the lien or securing the charge. If the instrument does not make any provision therefor, the resolution or ordinance shall fix and determine the amount that shall be set aside for interest on the secured debt or charge and a fixed amount to pay the principal thereof at maturity. Any surplus after satisfying the secured debt or charge may be used for the redemption of the principal and interest of bonds. Bonds may be issued pursuant to the provisions of this chapter in exchange for or in satisfaction of such secured debt or charge, or may be sold and the proceeds applied in payment of the secured debt or charge at or before maturity.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 19, effective June 17, 1954.

106.200 Procedure for sale, conveyance, rental, or lease of city-owned waterworks system.

No city of the second, third, fourth, fifth or sixth class which owns a waterworks system shall sell, convey, rent, or lease the system without the assent of a majority of the legislative body for the city or of those voting at an election held for that purpose after notice of the election has been published pursuant to KRS Chapter 424. This section shall not apply to the issuance of revenue bonds provided for under the provisions of this chapter.

Effective: July 14, 2000

History: Amended 2000 Ky. Acts ch. 529, sec. 10, effective July 14, 2000. -- Amended 1984 Ky. Acts ch. 6, sec. 1, effective July 13, 1984. -- Amended 1966 Ky. Acts ch. 239, sec. 118. -- Created 1954 Ky. Acts ch. 18, sec. 20.

106.210 Powers and functions of water district commissioners and city legislative bodies.

Except as otherwise specifically provided in this chapter the water district commissioners of the water district and the legislative body of the municipalities shall exercise all powers conferred by virtue of this chapter. Any board operating under the provisions of this chapter shall have the legal power and capacity to perform any act not repugnant to law and shall have the express power and capacity to do any and all acts or things necessary or convenient for the carrying out of the purposes of this chapter, including but not by way of limitation, the following express powers:

- (1) Acquire, hold and dispose of property, real and personal, tangible and intangible, necessary or incident to the proper conduct of its business;
- (2) Construct, acquire, own, lease, operate, maintain and improve plants or works for the production, pumping, filtration, treatment, distribution or sale of water and may provide water service to any user or consumer within and without the boundaries of said water district or municipality and may charge and collect reasonable rates therefor;
- (3) Construct, own, lease, rent, operate and control any and all works, buildings, facilities and equipment across, along, or under any street or public highway, and over any lands which are now or may be the property of the Commonwealth of Kentucky or of any county or municipality within this Commonwealth. The water district or municipality shall, however, at its own expense, restore any such street or highway to its former condition and state as nearly as may be possible and shall not use the same in a manner as to impair its usefulness or to interfere with or obstruct the maintenance thereof. Before exercising these powers the board shall obtain a permit or consent or approval in writing from the governing authority of the municipality, or the fiscal court, or the Department of Highways having appropriate jurisdiction over any and all of such respective streets or public highways;
- (4) Accept gifts, grants of property, real or personal, including money, from any person, municipality, or federal agency, or both, and to accept voluntary and uncompensated services; Provided, however, that when engineering services are required by any water district or municipality to render any services authorized or required or incident to surveys, plans, estimates of cost, or the valuation of property, or in the preparation of reports authorized by this chapter, no engineer who is engaged in whole or in part in the business of buying or selling any waterworks or water distribution system equipment, machinery, fixtures, materials, supplies, or the sale or purchase of bonds shall be eligible for employment or for any services whatsoever under the provisions of this chapter. The limitations hereinabove provided shall also apply to any firm of engineers and to any member of any firm of engineers, if the firm or member of the firm is engaged in whole or in part in the business of buying or selling any waterworks or water distribution system machinery, equipment, fixtures, materials, supplies, or the sale or purchase of bonds; and no such firm or member of such firm shall be eligible for employment or for any service whatsoever under the provisions of this chapter. Provided, further, that the provisions of this chapter shall not be construed to prohibit the board or the

governing authority of any water district or municipality from obtaining the advice or services of any engineer in the regular employment of the state or any federal governmental agency;

- (5) Contract debts and borrow money for the acquisition or improvement of any water plant and appurtenances thereto, issue bonds to finance such acquisition or improvement, provide for the rights of holders of the bonds and to secure the bonds as hereinafter provided, and pledge all or any of the net revenues derived from sale of water to the payment of such debts or repayment of money borrowed;
- (6) Acquire, hold, and, subject to the provisions of this chapter, and the applicable provisions of any bonds or contracts, dispose of any property, real or personal, tangible or intangible, or any right or interest in any such property in connection with any water plant and appurtenances thereto and whether or not subject to mortgages, liens, charges, or other encumbrances, subject to the provisions and requirements of this chapter;
- (7) Make contracts and execute instruments containing such covenants, terms, and conditions as in the discretion of the board may be necessary, proper, or advisable for the purpose of obtaining loans from any source, or grants, loans or other financial assistance from any governmental agency, including, but without limitation, covenants, terms, and conditions with respect to the acquisition or construction of any water plant and appurtenances thereto or any improvement thereto with money in whole or in part borrowed from or granted by any governmental agency; make all other contracts and execute all other instruments as in the discretion of the board may be advisable in or for the furtherance of the acquisition, improvement, operation and maintenance of any water plant and appurtenances thereto and the furnishing of water service; and carry out and perform the covenants, terms, and conditions of all such contracts or instruments;
- (8) Enter on any lands, waters and premises for the purpose of making surveys, soundings and examinations in connection with the acquisition, improvements, operation or maintenance of any water plant and appurtenances thereto and the furnishing of water service;
- (9) Do all acts and things necessary or convenient to carry out the powers expressly given in this chapter;
- (10) Make any contracts necessary or convenient for the full exercise of the powers herein granted, including, but not limited to, contracts for either the purchase or sale or both the purchase and sale of water and contracts for the acquisition or improvement of all or any part of a water plant and appurtenances thereto; and in connection with any such contract with a governmental agency, the board may stipulate and agree to such covenants, terms, and conditions as the governing body deems appropriate including, but without limitation, covenants, terms and conditions with respect to the resale rates, financial and accounting methods and the manner of disposing of the revenue of the water plant and appurtenances thereto conducted and operated by the board.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 21, effective June 17, 1954.

106.220 Power of eminent domain.

- (1) Any water district or municipality referred to herein shall have the right to acquire by exercise of the power of eminent domain all lands, easements, rights of way, either upon or under or above the ground, any existing water plant or water distribution system and appurtenances thereto, or any part of same, within the boundaries or corporate limits of such water district or city, and any and all real estate, franchises or personal property reasonably necessary or desirable in connection with the construction or operation or maintenance of water plants or water distribution systems, or improvements or extensions thereto, and the right to acquire same is hereby declared to be a superior and paramount right, superior and paramount to any other public use, and further provided that as in the eminent domain proceedings to acquire from any public or private utility a water plant or water distribution system the property condemned must include all the property owned by the utility within the corporate limits of the said water district or the city which is used or useful in connection with the business of providing water service.
- (2) The condemnation or eminent domain proceedings shall be brought in the name of the water district or in the name of the municipality, and title to the property so condemned shall be taken in the name of the water district or municipality as the case may be.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 22, effective June 17, 1954.

106.230 Procedure for condemnation.

When the board of any water district or municipality authorized to acquire, construct, own or operate a waterworks or water distribution system and appurtenances thereto, under the provisions of this chapter shall be unable to contract with the owner of any land, easements, rights of way, waterworks, water distribution systems and appurtenances thereto, or any facilities or property needed by such board for its use for the purposes thereof and desires to exercise the right of eminent domain, the board shall proceed pursuant to the Eminent Domain Act of Kentucky.

History: Amended 1976 Ky. Acts ch. 140, sec. 60. -- Amended 1974 Ky. Acts ch. 386, sec. 25. -- Created 1954 Ky. Acts ch. 18, sec. 23, effective June 17, 1954.

106.240 Repealed, 1976.

Catchline at repeal: Trial of exceptions to report -- Repeal.

History: Repealed 1976 Ky. Acts ch. 140, sec. 129. -- Amended 1968 Ky. Acts ch. 110, sec. 17. -- Amended 1966 Ky. Acts ch. 239, sec. 119. -- Created 1954 Ky. Acts ch. 18, sec. 26, effective June 17, 1954.

106.250 Limitation on right to challenge validity of resolution or ordinance.

Any action challenging the validity of any resolution adopted by any water district commissioners of a water district or challenging the validity of any ordinance adopted by the legislative body of any of the cities electing to operate under this chapter, any bond resolution or ordinance, or other resolution or ordinance, shall be brought within twenty (20) days from the date on which such resolution or ordinance was adopted, as the case may be, and if such action challenging the validity of same is not brought within such time the same shall be forever barred.

History: Amended 1966 Ky. Acts ch. 69, sec. 1. -- Created 1954 Ky. Acts ch. 18, sec. 25, effective June 17, 1954.

106.260 Form of bonds -- Improvement or refunding bonds -- Negotiability -- Procedure for sale.

- (1) Bonds issued pursuant to this chapter by water district commissioners and by a legislative body of a municipality may be issued in one (1) or more series, may bear a date or dates, may mature at a time or times, not exceeding forty (40) years from their respective dates, may be in a denomination or denominations, may be in a form, either coupon or registered, may carry registration and conversion privileges, may be executed in a manner, may be payable in a medium of payment, at a place or places, may be sold or hypothecated in blocks, and may be subject to the terms of repurchase or redemption of all or any of the bonds before maturity in a manner, and at a price or prices as may be fixed by the board prior to the sale of the bonds.
- (2) The board at any time may issue and sell revenue bonds to finance improvement or issue and sell refunding bonds for the purpose of providing funds for the payment of any outstanding bonds issued in accordance with the provisions of this chapter. The new bonds shall be issued, sold, and secured in accordance with the provisions of this chapter for the issuance of the original revenue bonds.
- (3) All revenue bonds issued pursuant to the provisions of this chapter in the hands of bona fide holders, shall have all the qualities and incidents of negotiable instruments under the law merchant. All bonds shall be sold to the highest responsible bidder at a time and place as shall have been fixed by the board in the notice of the sale of the bonds, which notice shall have been advertised by publication pursuant to KRS Chapter 424. The board shall receive written, sealed competitive bids, which shall be publicly opened and read at the time and place specified in the notice of sale. The board may reject all bids and readvertise.

Effective: July 15, 1996

History: Amended 1996 Ky. Acts ch. 274, sec. 31, effective July 15, 1996. -- Amended 1968 Ky. Acts ch. 110, sec. 17. -- Amended 1966 Ky. Acts ch. 239, sec. 119. -- Created 1954 Ky. Acts ch. 18, sec. 26, effective June 17, 1954.

106.270 Public Service Commission and other state agencies to have no jurisdiction over waterworks.

Neither the Public Service Commission nor any other board, commission or agency of Kentucky shall, unless in the future expressly authorized, have any jurisdiction over such water district or municipality, operation, management and control of any water plant or water distribution system or appurtenances thereto, or any power or authority over the regulation of rates or charges.

Effective: June 17, 1954

History: Created 1954 Ky. Acts ch. 18, sec. 27, effective June 17, 1954.