

## **WATER DISTRICT COMMISSIONER ETHICS PRACTICAL PROBLEMS**

1. Commissioners Able, Baker, and Charlie of Daniel Boone Water District are holding a joint session with the members of the board of directors of Davey Crockett Water Association and the Alamo City Utility Commission to discuss the possibility of joint water construction projects. As they discuss the project, the participants ask their lawyer, Lawyer Dewey of the law firm of Dewey, Cheatem and Howe, if they have the same ethical obligations and if different obligations might affect any joint projects.

2. Daniel Boone County has enacted a local ethics code to apply to all county officials. The Code specifically prohibits certain types of conduct that Commissioners Able, Baker, and Charlie of the Daniel Boone Water District would like to engage in. They visit Lawyer Dewey for an opinion regarding the applicability of the local ethics code to them.

3. Daniel Boone County has two water districts. Years before Daniel Boone Water District was created, Daniel Boone County's Judge Executive invited Mike Fink Water District to serve parts of Daniel Boone County. As a result, Mike Fink Water District's territory extends well into western Daniel Boone County.

Daddy Warbucks, a wealthy sports promoter, has decided to build a new, state-of-the-art motor speedway outside of Alamo City in Daniel Boone County. The motor speedway will be located in Daniel Boone Water District's territory. NASCAR has decided to hold one of its premier events at the Warbucks International Motor Speedway.

After the Speedway is built, Daniel Boone County Judge/Executive Boss Tweed foresees substantial development in the western part of Daniel Boone County, especially around a proposed Interstate highway exit, including restaurants, hotels and other tourism businesses that feed off of the Motor Speedway. He meets with the members of Daniel Boone Water District and orders them to extend a 12-inch water main ten miles down an existing highway to the area of the proposed interstate exit. The proposed exist is several miles outside of Daniel Boone Water District's territory and is in Mike Fink Water District's territory.

Commissioners Able, Baker and Charlie meet later with their water district's general manager and attorney. They ask if the water district can serve the area even though the area is outside the water district's territory and in another district's territory. Lawyer Dewey, of the law firm of Dewey, Cheatem and Howe, does not know. General Manager Jethro Bodeen does not know either, but states that if Daniel Boone Water District gets to the exit first, then Mike Fink Water District will not be able to get state economic development funding to build facilities to serve the area. Bodeen does not believe that Mike Fink Water District would voluntarily agree to release the territory to Daniel Boone Water District. Despite his lack of knowledge on the subject, Lawyer

Dewey agrees with Jethro Bodeen. Based upon this guidance, Commissioners Able, Baker and Charlie vote to make the extension.

4. Assume the same facts as Problem 3; however, Boss Tweed does not “order” the Commissioners to take any action. He suggests that, if they fail to assist him in his efforts to encourage development in western Daniel Boone County, he will either remove them from office or fail to reappoint them.

5. Assume the same facts as Problem 3 except that Boss Tweed neither orders the Commissioners nor threatens them with removal. Boss Tweed states that if Daniel Boone Water District does not assist his development efforts, he will provide little assistance in the form of county grants and funding assistance. In the past, Daniel Boone Water District has relied heavily upon county grants and other forms of assistance.

6. It is December and Christmas time is upon the Daniel Boone Water District. At the December meeting of the Board of Commissioners, General Manager Bernie Madoff recommends that all employees be given a Christmas bonus. He notes that Commissioners Able, Baker, and Charlie has also been working hard and recommends a Christmas bonus of \$100 for each commissioner. Commissioner Able moves to approve the recommendation and Commissioner Baker seconds it. All of the Commissioners vote in favor.

7. Daniel Boone Water District has an opening for a new meter reader. Commissioner Able urges the water district’s general manager to hire his son. Able’s son is an excellent worker and has good references from other employers.

8. Daniel Boone Water District’s general manager interviews Able’s son and selects him for the job. No vote of commissioners is taken, but Able had previously voted to give complete authority to the general manager to hire employees.

9. Daniel Boone Water District’s general manager interviews Able’s son and selects him for the job. The general manager presents the issue to the Daniel Boone Water District Board of Commissioners for a vote.

10. Daniel Boone Water District recently hired a new general manager. The new manager is hired on a probationary basis. After 6 months, the Board of Commissioners reviews the manager’s performance and takes a vote on permanent hiring. The manager has performed in an outstanding manner and has significantly increased the efficiency and effectiveness of the water district. Commission Able, however, desires the general manager’s position. When the final review of the incumbent manager’s performance is taken, he argues against retention and actively lobbies the other members of the Board to vote against retention. He is successful in his lobbying efforts and wins a rejection of the general manager’s employment contract. He subsequently applies for the position of general manager.

11. Commissioner Able owns property that is located within the territory of Daniel Boone Water District, but which the water district does not presently serve. Able applies to the water district for water service. The requested service will not require a deviation from existing water district rules or regulations. The Board of Commissioners is not required to take any action on his application. The provision of water service to the property will increase the value of the property.
12. Commissioner Able's request for water service requires a deviation from Daniel Boone Water District's Rules and Regulations. The Board of Commissioners must vote on the request for a deviation.
13. Daniel Boone Water District does not pay its commissioners a salary. Commissioner Able proposes that, in lieu of a salary, the commissioners should be given free water service. His motion is presented to the Board of Commissioners and is adopted by unanimous vote. Free water service represents an annual cost of approximately \$360. KRS 74.020(6) would permit a maximum salary of \$6,000.
14. Commissioner Baker is president of Simon Legree Bank, a local bank. Daniel Boone Water District has a checking account with Simon Legree Bank. The Bank has also purchased refinancing bonds that Daniel Boone Water District issued. When the water district negotiated the sale of the bonds with the bank, Baker did not take part in the negotiations.
15. Daniel Boone Water District is examining its insurance coverage and determines that a new and more comprehensive policy is required. It negotiates with Bobby Baker, Commissioner Baker's son and the only insurance agent in Daniel Boone County. At the conclusion of the negotiations (in which Commissioner Baker did not take part), a contract is presented to the Board of Commissioners for action.
16. Commissioner Able is a local automobile dealer. Daniel Boone Water District has an ageing fleet of vehicles and is planning to purchase several new vehicles. It publishes a request for bids. Able would like to submit a bid.
17. Commissioner Able is a retired attorney who has some experience constructing and installing water mains. Daniel Boone Water District is about to begin a new water distribution main expansion project. Its engineering firm proposes to assess a fee of \$27,000 for inspection services to ensure that the construction firm properly installs the water distribution main. Able proposes that Daniel Boone Water District enter a personal services contract with him for the inspection services. Able will perform the services for no more than \$7,500. He argues, and the Board of Commissioners agrees, that he is as competent as the last inspector that the engineering firm retained and will proceed with the water district's best interest always in mind. Daniel Boone Water District's Board of Commissioners votes to offer the contract. Commissioner Able is currently paid a salary of \$6,000.

18. Daniel Boone Water District has several pieces of heavy construction equipment used to install, repair, and maintain facilities. Able directs the water district's general manager to provide him access to equipment on the weekends. Able uses the equipment to make improvements upon his property. Equipment is returned to water district before start of business week. Water district does not incur any loss of time by the transaction.

19. Assume the same facts as Problem 18, but Daniel Boone Water District has a written policy that permits employees and officials to use equipment during non-work hours. Policy requires the payment of rental fees, proof of insurance coverage on equipment, and indemnification agreement.

20. Able uses water district office equipment to prepare private letters or assist local church or social group of which he is a member. He uses equipment only during non-business hours and makes all efforts to ensure that his use does not interfere with any water district activity or operation. His use is infrequent.

21. Able directs Daniel Boone Water District's general manager of water district employees to make improvements upon his property during work hours and using water district equipment.

22. Daniel Boone Water District needs to make major system improvements, including the construction of large transmission and distribution mains, to improve service and meet expected future demands. The water district's general manager, engineers, and a member of its Board of Commissioners have extensively studied various options for the route of transmission and distribution mains. The best route is a route that runs in part over the property of Commissioner Able. Able did not participate in any of the planning discussions. If the route is selected and the new facilities are built, the value of Able's property will increase significantly.

23. Assume the same facts as Problem 22. The other members of the Board of Commissioners and the water district's employees are unaware of Able's interest in the property. (ABC Corporation owns the property. Able is the principal stockholder of ABC, but is not listed as an officer on any state records.)

24. Assume the same facts as Problem 22 with the following changes: Able participated in the planning process. He was aware of certain conditions on his property that would render the route unusable or at least increase the cost of installing the mains. This increased cost would likely lead to the planning group recommending an alternative route. The problems were not readily known to the planning group or any other member of the public. Able did not reveal these problems to the planning group or to the Board.

25. Assume the same facts as Problem 21 with the following changes: Able participated in the planning process. He does not own Blackacre. After learning that

26. Daniel Boone Water District has outgrown its present offices. It needs to construct a new office building within the town of Mingo City to better serve its customers. Commissioner Able, a member of the Daniel Boone Water District Board of Commissioners, also serves on the governing board of his local church. During the course of his normal business activities, he discovers that Businessman Brown would like to sell his business property and is willing to sell at a low price to facilitate his quick retirement to Arizona. Brown's property is an excellent location for the new Daniel Boone Water District offices. It is also an excellent location for a new church. Able's church is searching for a new location to build a larger church building.

27. Able is also a member of the Mingo City Economic Development Commission whose purpose is to encourage economic development in the area surrounding Mingo City. As part of its efforts, the Commission operates the Mingo City Industrial Park. Fuji Motors, a large foreign automobile maker, wants to locate a parts plant in Mingo City. This plant will use a large amount of water and require major infrastructure improvements on the part of Daniel Boone Water District to provide the necessary service. One such improvement is the construction of a large water storage tank to serve the Park. The best location for the tank is on a high hill that Farmer Brown owns. While Fuji Motors is investigating Mingo City as a possible site, it has confidential discussions with Daniel Boone Water District officials regarding the possible siting and the water district's ability to supply water. Realizing that Farmer Brown's land will be extremely valuable if the relocation occurs, Able meets with Brown and obtains an option to purchase the hillside at a relatively low price. Fuji subsequently decides to locate in Mingo City. Able now wants to sell the property to the water district.

28. Assume the same facts as Problem 27 except that Able offers to donate the property to the water district if the water district will make several improvements that will benefit the industrial park.

29. Assume that Able purchases other land, related to the water district's needs but based upon information that he obtained during the negotiations with Fuji Motors. These purchases become extremely valuable directly as a result of the location of the Fuji Motors factory to Mingo City.

30. Commissioner Able is a real estate agent. He has a client who has a parcel of property near a water district structure. Able argues to the board of commissioners that the water district should purchase this parcel. The board agrees and executes a contract for the purchase. As real estate agent for the seller, Able is entitled to a 5 percent commission on the purchase price. He expressly declines the commission, but arranges for the seller to donate an amount equal to the declined commission to a local charitable organization. Able is the chairman of the organization. Able did not vote on the resolution to purchase the parcel, but lobbied for its enactment.

31. Able is the chairman of the Daniel Boone Chamber of Commerce. The chamber has played a significant role in economic development for Daniel Boone County. The chamber is conducting a fund-raising campaign to fund its economic development efforts. Able believes that Daniel Boone Water District should support this campaign. The chamber requests a contribution from the water district.

32. Commissioner Able is an avid supporter of the Daniel Boone Little League. This year the Little League team has been very successful and will get a chance to play in the national tournament. To get to Williamsport, Pennsylvania, it needs money. Able wants the water district to donate a \$1,000 toward the team's effort.