

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DORIS HORN AND J. W. HENDERSON, ET AL.)	
)	
COMPLAINANTS)	
)	
VS.)	CASE NO.
)	91-032
ESTILL COUNTY WATER DISTRICT NO. 1)	
ARCHIE MCINTOSH, DAN ROSE, JAMES SONS)	
)	
DEFENDANTS)	

O R D E R

On January 28, 1991, Doris Horn and J. W. Henderson filed a complaint against the Estill County Water District No. 1 ("Estill District") requesting removal of its water commissioners, nullification of a wastewater sewer project adopted by Estill District, and voidance of all condemnation actions instituted by Estill District in connection with the wastewater sewer project. The complaint alleges 16 separate acts of misconduct on the part of the commissioners. Attached to the complaint was a list of grievances addressed to the Commission from property owners in the South Irvine and West Irvine communities of Estill County.

In support of the complaint, the complaining parties also attached two petitions purporting to be from the residents of the communities to be affected by the new sewer project. The first petition, dated July 20, 1990, was to the Estill County Fiscal

Court for the removal of the commissioners of Estill District. The second petition is undated and not directed toward any official or agency. Like the complaint, however, the second petition lists specific grievances which the petitioners request be redressed.

On February 15, 1991, the Commission ordered Estill District to satisfy or answer the allegations of the complaint. Estill District filed an answer on March 1, 1991 denying all allegations concerning the proposed sewer project and any impropriety by the water commissioners in their management of the water district. The case was then set for hearing.

Hearings on the complaint were held on October 7, 1991, November 1, 1991, and December 11, 1991. At the hearings, the residents of Estill County were represented by the complainants, Doris Horn and J. W. Henderson. Estill District was represented by its attorneys.

MOTION TO DISMISS

In a written summation submitted subsequent to the last hearing, Estill District requested that Doris Horn be dismissed as a complainant to these proceedings on the grounds that she had no standing to join in the complaint. The summation further requested that the residents of Estill County nominated in the complaint as parties likewise be dismissed as complainants. The motion was based upon evidence presented at the close of the last hearing.

The complaint which initiated this proceeding, although signed only by Doris Horn and J. W. Henderson, made specific

reference to the attached petitions and represented that it was filed on behalf of all the petitioners who signed the petitions. Doris Horn and J. W. Henderson, as the complaining parties, requested that they be permitted to serve as spokespersons for the petitioners and the clear inference from the complaint is that the petitioners had delegated that authority to them.

The complaint also states that it is made on behalf of the "property owners of the affective (sic) area of Estill County." From that allegation, it is reasonable to infer that the complaining parties, Doris Horn and J. W. Henderson, as well as the signers of the petitions, are currently owners of property in the affected areas, or at least residents. Evidence presented at the last hearing brings into serious doubt, and in some cases directly repudiates, these inferences drawn from the complaint.

At the last hearing it became clear that the petitions supporting the complaint were apparently signed over an extended period of time. Furthermore, there is reason to believe that some of the signatures are not genuine. But even if all the signatures were genuine, Doris Horn and J. W. Henderson admitted at the hearing that neither the petitioners, nor any other resident of the affected area, authorized them to act in their behalf. Moreover, although Doris Horn represented in the complaint that she was a resident of Estill County, she admitted in her testimony that, at the present time, and at all times relevant to this proceeding, she has lived elsewhere. Consequently, Doris Horn had no standing to bring this complaint, and while J. W. Henderson has standing to bring the complaint in his own behalf, he has no

authority to bring the complaint on behalf of anyone else. Therefore, Doris Horn and the petitioners named in the complaint, exclusive of J. W. Henderson, should be dismissed as parties to this proceeding.

Notwithstanding the lack of standing on the part of Doris Horn, a record was compiled before the Commission which raised several issues concerning the management of Estill District, a public utility, which the Commission is charged by KRS 278.040 to regulate.

STATEMENT OF THE ISSUES

Although the complaining parties make several allegations, the complaint raises only two major issues. The first issue is whether the wastewater sewage treatment project adopted by Estill District should be nullified. The second issue is whether the water commissioners have committed acts of misconduct for which they may be removed from office by this Commission.

THE PROPOSED SEWER PROJECT

The proposed sewer project was approved by the Commission in Case No. 91-216.¹ The proposed system is not a conventional system but is described in that case as a "septic tank effluent diameter gravity sewer system with a recirculating sand filter

¹ Case No. 91-216, The Application of Estill County Water District No. 1 of Estill County, Kentucky, for a Certificate of Public Convenience and Necessity, to Construct, Finance and Increase Rates.

treatment plant." According to the engineering report filed in that case, Estill District first proposed construction of a conventional collection system which would deliver wastewater to the Irvine sewage plant for treatment. When Estill District was unable to obtain funding for the original plan, it opted for the proposed system.

The request to nullify the proposed sewer project is made on three grounds. The first is that the project is largely opposed by the residents of Estill District whom it will affect. The opposition is based upon the general opinion in the community that the proposed treatment plant will not work. This opinion is derived in part from a belief that a similar system constructed in the community of Sadieville in Scott County does not function properly and that the customers of that system are not satisfied with the service they are receiving. Even if that formed a valid basis for nullifying the project, insufficient evidence was presented at the hearing to substantiate its truth or accuracy.

The second ground relied upon is that the project was approved by the water commissioners over the objections of the residents. Their objections were presented at a public meeting conducted by the Estill County Fiscal Court to give the residents of Estill District an opportunity to express their concerns about the proposed project. Although the commissioners of Estill District were invited to attend this meeting, they declined to do so. Whether or not the commissioners' failure to attend the meeting was a mistake in judgment is immaterial. As commissioners, their decision to construct a wastewater treatment

system did not require public consent. They, therefore, had no obligation under the law to meet with the residents, and their failure to do so is not a ground for nullification of the project.

The final ground relied upon to nullify the project is the contention that the water commissioners did not have the authority to adopt the project or otherwise act on behalf of Estill District because their terms of office had expired. Neither the evidence nor the law supports this contention.

Instead, it appears from the evidence that the term of one of the commissioners expired on January 1, 1991. The record does not establish when Estill District adopted the proposed project and whether adoption occurred before or after that date. Nevertheless, no one has been appointed to replace the commissioner whose term has expired and, as noted in an earlier Order of this Commission entered in this proceeding on December 6, 1991, the rule in this state is that in the absence of a provision to the contrary, elected or appointed officials remain in office at the expiration of their terms and are entitled to exercise the powers of their office until their successors are appointed and qualified. Therefore, even if all the members' terms expired prior to their approval of the project, until their successors are appointed and qualified to replace them, they remained in office and retained the authority to act on behalf of Estill District.

The proposed sewer project was approved by this Commission in Case No. 91-216 on July 19, 1991. Because funding of the project was derived in large part from a loan by the Farmers Home Administration and grants from the Environmental Protection

Agency, the Appalachian Regional Commission, and the Farmers Home Administration, the Order approving the project noted that this Commission was required by KRS 278.023 "to issue the necessary orders to implement the terms of [the] agreements" with those agencies. There is no evidence that the complaining parties or any resident or customer of Estill District ever filed any objection to the project prior to its approval with this Commission or the governmental agencies funding the project. At all times, Estill District's actions in adopting the project were consistent with its authority, and this Commission was required to approve it. Therefore, the request to nullify the project should be denied.

REMOVAL OF THE WATER COMMISSIONERS

The complaining parties complain that the water commissioners have committed acts of misconduct for which they should be removed from office. The Commission's authority to remove water commissioners from office is derived from KRS 74.455(1). That section of the statute provides in part as follows:

"[t]he public service commission may remove any water commissioner from his office for good cause, including inter alia, incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance or malfeasance in office, including without limiting the generality of the foregoing, failure to comply with rules, regulations, and orders issued by the public service commission."

Although the complaints alleged numerous acts of misconduct, the allegations of misconduct can be summarized into the following 11 categories:

1. Paying compensation to Estill District's commissioners in excess of the amounts authorized by the fiscal court.
2. Authorizing expenditures for labor, materials, and supplies without submitting them for public bid.
3. Employing the master commissioner of the Estill County Circuit Court to appraise property for the proposed sewer system and to assist in the purchase of such property, and purchasing a truck from an automobile dealership owned by a member of the Estill County Fiscal Court.
4. Employing an independent contractor to provide services and labor without a written contract.
5. Allowing employees of Estill District who are not bonded to disburse funds.
6. Serving as a water commissioner while also serving as Vice Chairman of the Estill County Soil Conservation Board.
7. Conducting business meetings without a quorum.
8. Providing preferential service to one customer that is not provided to other customers of Estill District.
9. Failing to advertise special called meetings.
10. Employing a private attorney to represent Estill District.
11. Failing to file annual financial reports.

Compensation of Water District Commissioners in Excess of Amounts Authorized by Fiscal Court

KRS 74.020 authorizes the county judge/executive, with the approval of the fiscal court, to fix an annual salary for water district commissioners not to exceed \$3,600 per year. In

accordance with the statute, the Estill County Fiscal Court has approved a salary for the water commissioners of \$150 per month. However, in addition to the compensation approved by the fiscal court, Estill District has also approved additional monthly salaries for two of the commissioners, a single payment of \$100 each to two of the commissioners, Christmas bonuses, "incidental" expense payments, and reduced rates for water service. The additional compensation has never been authorized or approved by the county judge/executive and the fiscal court and constitutes a violation of the law.

The payments of \$100 each were made to Archie McIntosh, chairman of Estill District, and James Rose, a commissioner. The payments were made to compensate them for their time in travelling to London for a meeting in connection with the proposed sewer project. The "incidental" expense payments were paid to all the commissioners for attending the annual meeting of the Rural Water Association. The "incidental" expense payments were in addition to payments to each commissioner to reimburse them for their food, lodging, and travel expenses. The \$100 payments, the "incidental" expense payments, as well as the Christmas bonuses and the reduced water rates, were compensation for services incidental to their positions as water commissioners. Because the compensation was not authorized or approved in accordance with KRS 74.020, it clearly violated the statute. Buchignani v. Lexington-Fayette Urban County Government, Ky. App., 632 S.W.2d 465 (1985); Land v. Lewis, 186 S.W.2d 803 (Ky., 1945).

The benefit received by the commissioners, which they authorized in the form of reduced water rates, and which they continue to receive, not only violates KRS 74.020, but KRS 278.170 as well. Subsection (1) of that section prohibits a utility from giving an unreasonable preference in rates to any person or class of persons. Although subsection (2) of that section permits a utility to provide reduced rates to its officers, agents, or employees, such preferential treatment can only be given by approval from this Commission. There is no evidence of such approval, and the allowance of the reduced rates to members of the commission is in violation of the statute.

In addition to the salaries authorized by the fiscal court, Chairman McIntosh and Commissioner Sons have been paid a monthly salary by Estill District for several years. Mr. McIntosh receives \$200 a month and Mr. Sons receives \$100 a month. The extra compensation is for inspecting the system's water tanks and pump stations and attending to any problems that are discovered. These inspections are made on a regular basis and are deemed necessary by the water commissioners for the efficient operation of the system. The water commissioners justify their salaries by the fact that if they did not make these inspections, Estill District would have to employ someone else to perform them in their place. They contend that the performance of these duties does not conflict with their managerial responsibilities as water commissioners and is not incidental to that position. In other words, they contend that in performing these duties they are acting as employees of Estill District and not as water

commissioners. Although their duties as water commissioners may be separate and distinct from their duties as employees, because their positions as employees are subordinate to the positions as water commissioners, the two different positions are incompatible and the simultaneous occupation of both positions is in violation of the law. Barkley v. Stockdell, et al., 252 Ky. 1, 66 S.W.2d 43, 44 (1933).

The additional salaries are also invalid because their payment is contrary to public policy. The general rule is that public officers may not authorize payment to themselves out of public funds which they have a duty to protect. 56 Am.Jur.2d Municipal Corporations, Etc. §294. This rule was followed by the Kentucky court in Commonwealth v. Withers, 266 Ky. 29, 98 S.W.2d 24, 25 (1936) where it stated:

"It is a salutary doctrine that he who is entrusted with the business of others cannot be allowed to make such business an object of profit to himself. This is based upon principles of reason, of morality, and of public policy."

The authorization of additional salaries is therefore prohibited as a violation of public policy, even though it is for services that do not conflict with their duties as water commissioners because the public funds from which such salaries are paid have been entrusted to the commissioners' care. This same rule also applies to the payments of \$100 each to Commissioners Archie McIntosh and James Sons, the Christmas bonuses paid to all three commissioners, and the payment of "incidental" expense money.

Authorizing Expenditures for Labor, Materials, and Supplies
without Submitting them for Public Bid

One of the complaints made against Estill District's commissioners is that they authorized expenditures for labor, materials, and supplies without submitting them for public bid. Specifically, these expenditures complained of are as follows:

1. Estill District purchased two pickup trucks; one in 1985 for approximately \$8,000 and one in 1988 for approximately \$9,700.

2. Estill District, during the previous five-year period, has paid Denny Arvin, an independent contractor, compensation totalling \$384,000 for work performed on the system.

3. Estill District has paid Billy F. Williams approximately \$13,000 for his services in appraising property and acquiring rights-of-way for the proposed sewer project.

4. Estill District purchased fuel for its motor vehicles and, during the first six months of 1991, expended between \$1,400 and \$1,500 for such purchases.

All of these expenditures were made without submitting them for public bid.²

Local governmental agencies, including water districts, are precluded by KRS 424.260 from contracting for materials, supplies,

² The complaint was also made that one of the Water District employees, Everett Murphy, in addition to his regular wages, was compensated for labor performed on his own time as an independent contractor. The additional amounts paid to Mr. Murphy were \$1,100 on April 1, 1986, \$1,000 on May 14, 1987, and \$1,482.74 during 1990. The evidence establishes, however, that these payments were made for overtime work and were part of Mr. Murphy's compensation as an employee of the Water District.

equipment, or services, other than professional services, involving expenditures of more than \$10,000 without first advertising them for bids. Prior to July 13, 1990, when the statute was amended to its present form, the maximum expenditure for the years in question in these proceedings was \$5,000. The maximum does not apply where the expenditure is for an emergency, provided the chief executive officer of the water district certifies in writing the existence of the emergency and files the certificate with the water district's chief financial officer.

Clearly, any single expenditure in excess of the maximum allowed is a violation of the statute. This would apply to the purchases in 1985 and 1988 of the pickup trucks for which Estill District did not advertise for bids. While the claim is made that these were emergency purchases, no such certification was ever made by the commissioners. In authorizing those purchases, the commissioners of Estill District, therefore, violated the statute.

What is less clear is whether the payments for fuel or the payments to Denny Arvin also violated the statute. While each of these payments were for less than the statutory maximum, the total amount paid in the aggregate for fuel purchase or to Denny Arvin exceeded the statutory maximum.

In Board of Education of Floyd County v. Hall, Ky. 353 S.W.2d 194, 196 (1962), the court declared that the publication requirements of the statute may not be evaded by dividing an expenditure for a single purpose into multiple parts. There, the court, citing McQuillen, Municipal Corporations, Section 29.30 (Volume 10, page 268), held, however, that "public contracts must

be reasonably adapted to the customs and channels of trade" and where they are legally separable and factually separate, they should not be considered in the aggregate. The evidence presented by the complaining parties in this case is insufficient to determine whether the payments to the Denny Arvin Construction Company or the purchases of fuel were for a series of separate transactions, each below the statutory maximum, or whether they should be considered in the aggregate as one transaction which exceeded the statutory maximum. Therefore, with respect to these payments, the violation has not been established.

The only other expenditure complained of was for \$13,000 paid to Billy F. Williams for his services in appraising property and acquiring rights-of-way. Such services are professional services not covered by the statute and, therefore, not subject to the bidding requirement.

Employment of the Master Commissioner and the Purchase of the Pickup Truck from a Member of the Fiscal Court

The commissioners of Estill District, in connection with the proposed sewage treatment project, employed Billy F. Williams to appraise property needed for the project and otherwise assist the water district in acquiring such property. Mr. Williams is the master commissioner of the Estill County Circuit Court and the complainants maintain that his employment for this purpose was unlawful because it constituted a conflict of interest on his part.

The complainants also complained that the commissioners of Estill District should not have purchased a pickup truck in 1985

from a dealership owned by one of the magistrates of the Estill County Fiscal Court. The complainants maintain that this transaction was unlawful because it, too, constituted a conflict of interest on the part of the magistrate.

The general rule is that contracts by public employees that tend to interfere with the performance of their public duties violate public policy. In 63 Am.Jur.2d Public Officers and Employees §334, the rule is stated as follows:

"A contract made by a public officer is against public policy and unenforceable if it interferes with the unbiased discharge of his duty to the public, or if it places him in a position inconsistent with his duty as trustee for the public, or even has a tendency to induce him to violate such duty."

While the rule is expressed in terms of the obligation of a public official not to enter into a contract which would interfere with his official duties, it is logical to assume that the rationale for such a rule would likewise prohibit public agencies from inducing officials of other public agencies into entering into such agreements. The question presented, therefore, is whether the employment of the master commissioner to perform services for Estill District or whether the purchase of an automobile from a member of the fiscal court interfered with the ability of the master commissioner and with the ability of the fiscal court member to perform their duties.

The office of the master commissioner is created by statute and regulated by the rules of civil procedure adopted by the Supreme Court. KRS 31A.010 authorizes the circuit court in each judicial district to appoint a master commissioner for each county

in the district. Master commissioners serve at the discretion of the circuit court for terms not to exceed four years and their terms are automatically terminated if the circuit judge who appoints them resigns, dies, or is removed from office. Since January 1, 1989, master commissioners have been required by Civil Rule 53.01 to be attorneys and, although they may be assigned other duties, their normal function, as authorized by Civil Rule 53.02, is to execute judicial sales under such terms as the court prescribes.

Under these circumstances, it is difficult to see how the employment by Estill District of the master commissioner could interfere with his judicial duties. But even if his duties as appraiser for Estill District would, on occasion, conflict with his duties to the court, KRS 31A.040 simply requires the court to appoint a special commissioner for those situations. Therefore, the employment of the master commissioner to assist in the acquisition of property, even though that same property might have to be acquired by condemnation proceedings in the circuit court employing the same master commissioner, did not create a conflict of interest and was not improper.

The same is not true for the purchase of the truck. The truck was purchased from a dealership owned by a member of the Estill County Fiscal Court. KRS 74.020, by providing that appointments to the board of a water district be approved by the fiscal court, indirectly gave the member a pecuniary interest in a transaction which conflicted with his duty to protect the public

trust. Therefore, even though no harm or loss to the water district has been demonstrated, the contract was improper.

Employing an Independent Contractor to Provide Services without Written Contract, Proof of Liability Insurance, and a Performance Bond

As noted earlier, Estill District employs Denny Arvin Construction Company to repair leaks and breaks in its distribution system and to install water meters. Although the construction company does a considerable amount of work for the water district and receives on average more than \$70,000 a year for the work performed, the work is done only when the need or an emergency arises, and there is no evidence that the construction company does any work for the water district on a routine basis. The complaint made is that the construction company does not furnish a performance bond for the proper performance of the work and that the work is performed without a written contract between the construction company and the water district.

The complaint was also made that the construction company does not furnish written proof of liability insurance to protect Estill District against claims for damages or injuries arising out of the work performed by the construction company. The evidence, however, was that such proof of insurance has been furnished and is maintained in the files of Estill District.

Although KRS 74.260 requires a contractor to furnish a performance bond while making improvements to a water system operated by a water district, there does not appear to be a similar requirement for a contractor making repairs to the system, nor does there appear to be any requirement that there be a

written contract between the contractor and the water district when repair work is performed. Therefore, not requiring Denny Arvin Construction Company to furnish either a written contract or a performance bond does not constitute a violation of law.

Allowing Employees of the Water District Who are not Bonded to Disburse Funds

Normally, funds of Estill District are disbursed by a check issued by the treasurer and co-signed by the president. If either the treasurer or the president, or both, are unavailable to sign the checks, the general manager employed by Estill District, or her assistant, have the authority to sign the checks in their place. This procedure is contrary to the statute.

Each water district commissioner is required by KRS 74.020(4) to elect from its board a chairman, a secretary, and a treasurer. KRS 74.050 authorizes only the treasurer to disburse funds of the water district and then only on warrants issued by the chairman and co-signed by the secretary. The statute does not authorize any deviation from this procedure. Therefore, the violation lies not in the fact that the employees are not bonded, but in the fact that such employees issue funds at all.

Membership on Water Commission While Also Serving as Vice Chairman of the Estill County Soil Conservation Board

Dan Rose, in addition to serving as a commissioner of Estill District, also serves as a member and vice chairman of the Estill County Soil Conservation District Board, an entirely separate body. The complaining parties maintain that his service on that board creates a conflict of interest with his duties as

commissioner of the water district. This position taken by the complaining parties has no support in the law and is erroneous.

Soil conservation districts are authorized by KRS 262.020 to be formed for the purpose of conserving and developing all renewable natural resources within their boundaries. They are declared by KRS 262.200 to be subdivisions of state government and their affairs are managed by a board of seven supervisors.

Water districts are formed pursuant to KRS 74.010 for the purpose of furnishing a water supply to residents of the district. They are subdivisions of county government and, pursuant to KRS 74.020, their affairs are managed and supervised by a board of commissioners appointed by the fiscal court. The duties imposed upon supervisors of conservation districts and those imposed upon commissioners of water districts are not antagonistic and persons serving on both boards are not charged with the protection of conflicting interests. Further, there is no statutory prohibition against serving on both boards simultaneously. Therefore, because the offices are not incompatible and they present no conflict of interest, Dan Rose's simultaneous service as a water commissioner and as a soil conservation district supervisor does not violate the law.

Conducting Business Meetings without a Quorum

On several occasions, business meetings of the Estill District commission were conducted when only one of the commissioners was present. At such meetings, the commissioner conducting the meeting approved the payment of bills and

authorized other water district business. Such actions on the part of the commissioner were clearly improper.

In the absence of a statute pertaining to a specific agency, the number of members necessary to constitute a quorum for that agency is governed by KRS 446.050. That section of the statute provides:

"Words giving authority to three or more public officers or other persons shall be construed as giving such authority to a majority of such officers or other persons."

Thus, under the law, in the absence of a specific statute, a majority of any public body constitutes a quorum for the transaction of business. Furthermore, a majority of a quorum is required to authorize or approve any particular action by the public agency. Louisville and Jefferson County Planning and Zoning Commission v. Ogden, 307 Ky. 362, 210 S.W.2d 771, 774 (1948). A majority being generally construed as one more than half the members, to constitute a quorum at least two members of Estill District's commission must be present, and one commissioner clearly has no authority to act by himself to conduct or authorize water district business.

Providing Preferential Service to One Customer

The published tariff of Estill District requires that all bills to customers for water service be paid monthly. The tariff provides no exceptions from this rule. Nevertheless, one of the water district's customers has been expressly allowed by the water commissioners to pay his bill annually. The preferential treatment given to this one customer violates KRS 278.170(1) which

prohibits utilities from giving "any unreasonable preference to any person." Therefore, the preferential treatment is in violation of the law.

Failure to Advertise Special Called Meetings

When a special meeting of a water district's board is called, KRS 61.825 requires that written notice of the meeting be given to each member and to each newspaper of general circulation in the district, to each radio station and to each television station which have requested such notice. Apparently, the members of Estill District board were unaware of this requirement and did not notify the newspaper, radio station, and television station when special meetings were called. However, there is no evidence that any newspaper, radio station, or television station ever requested that they be given such notice and, therefore, no violation has been established.

Employing a Private Attorney to Represent the Water District

The complaint is made that although the county attorney is required by law to represent Estill District, the water district has for many years employed its own attorney at an annual cost of \$900 a year. The complaining parties maintain that this expenditure places an unreasonable burden upon the water district customers.

Although KRS 74.030 requires the county attorney to represent each water district within the county, water districts are permitted to employ other counsel if given approval by the fiscal court. There is no evidence that such approval was not obtained and no violation of the statute has been established.

Failing to File Annual Financial Reports

All local governmental agencies, including water districts, are required by KRS 424.220 to publish in a local newspaper an annual financial statement of all revenues and expenditures during the preceding fiscal year. The publication must be made within 60 days after the close of the fiscal year and the person responsible for collecting and disbursing the funds of the public agency is charged by the statute with the duty of publishing the statement. The complaint made is that Estill District did not comply with this requirement.

Although the complaining parties charged that the water district has not complied with this requirement, they have presented no proof to support the charge. The evidence was that the commissioners of the water district relied upon the general office manager to publish the report and, while the office manager was called as a witness by the complaining parties, she was never asked if the financial reports were published. In the absence of any proof that the statements were not published, it cannot be assumed that Estill District has not complied with the statute.

CAUSE FOR REMOVAL

In summary, the record establishes six acts of misconduct on the part of the water commissioners. These acts are as follows:

1. The commissioners received - in the form of salaries, payments, and reduced water rates - compensation from Estill District in addition to the amounts authorized and approved by the fiscal court.

2. The commissioners authorized the purchase of two pickup trucks, one in 1985 and the other in 1988, without advertising for bids.

3. The commissioners authorized the purchase of one of the pickup trucks from a member of the fiscal court.

4. The water district disbursed its funds in payment of bills in a manner that violated the statute.

5. The commissioners have, on occasion, conducted business meetings without a quorum.

6. The commissioners have approved preferential treatment to one of Estill District's customers in the payment of water bills.

While KRS 74.455(1) authorizes the Commission to remove water district commissioners, such authority can only be exercised when "good cause" for the removal has been demonstrated. What constitutes good cause was discussed in Bourbon County Board of Education v. Danaby, 314 Ky. 419, 235 S.W.2d 66, 70 (1950) where the court held:

"The word "cause" in a statute authorizing the removal of officers for cause means legal cause and not any cause which the board authorized to make such removal may deem sufficient. . . it must be cause relating to, and affecting, the administration of the office and must be limited to something of a substantial nature affecting the rights and interests of the public."

In other words, before the Commission may remove any water commissioner from office, it must find that the water commissioner has committed acts of misconduct relating to the duties of the office and, if so, that those acts adversely, severely, and substantially affected the rights and interests of the customers

of the water district. When measured against this standard, the violations of the water commissioners were not shown to have so adversely affected interests of the customers of Estill District to constitute sufficient cause for their removal. The violations, however, are a matter of concern to the Commission and this matter should remain open for a period of 90 days during which additional evidence may be tendered for consideration by this Commission. In addition, copies of this Order should be sent to the Attorney General of the Commonwealth, the Estill County Judge/Executive, the Estill County Fiscal Court, the Estill County Attorney, and the Estill County Commonwealth Attorney for whatever action they deem appropriate.

This Commission being otherwise sufficiently advised,

IT IS THEREFORE ORDERED that:

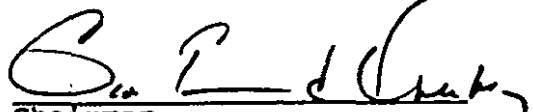
1. The complainant, Doris Horn, and the persons whose names appear on the petitions attached to the complaint, not including complainant J. W. Henderson, are hereby dismissed as complainants to this proceeding.
2. The complaint to nullify the wastewater sewage treatment plant project adopted by Estill District be and is hereby denied.
3. The complaint to remove the commissioners of Estill District shall be retained on the Commission's docket for a period of 90 days from the date of this Order during which period the complainant, or any interested party, may submit additional evidence relevant to that issue. If at the expiration of the 90-day period no additional evidence has been submitted, the

complaint shall be dismissed without further Order of the Commission.

4. Copies of this Order shall be sent to the Attorney General of the Commonwealth, the Kentucky Auditor of Public Accounts, the Estill County Judge/Executive, the Estill County Fiscal Court, the Estill County Attorney, and the Estill County Commonwealth Attorney.

Done at Frankfort, Kentucky, this 11th day of May, 1992.

PUBLIC SERVICE COMMISSION


Chairman


Vice Chairman


Commissioner

ATTEST:


Executive Director, Acting