

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DEXTER-ALMO HEIGHTS WATER DISTRICT AND)	
ITS INDIVIDUAL COMMISSIONERS, JOE DAN)	CASE NO.
TAYLOR, CHARLES BOREN, AND PAT PASCHALL)	2017-00468
ALLEGED FAILURE TO COMPLY WITH KRS)	
278.300)	

ORDER

By Order entered January 11, 2018, the Commission initiated this proceeding to determine whether Dexter-Almo Heights Water District (Dexter-Almo Heights District) and its commissioners, Joe Dan Taylor, Charles Boren, and Pat Paschall (collectively, Respondents) should be subject to the penalties prescribed in KRS 278.990 for aiding and abetting an alleged violation of KRS 278.300(1), which states that no utility shall issue any form of indebtedness until it has been authorized to do so by an order of the Commission.

The alleged violation giving rise to this case is the Respondents' execution of a loan from Murray Bank in Calloway County, Kentucky, (Murray Bank) in the principal amount of \$145,988. The promissory note had an origination date of December 9, 2009, and a 15-year term. In Case No. 2006-00420, the Commission granted Dexter-Almo Heights District a Certificate of Public Convenience and Necessity to construct the "Coles Campground Road Project" and approved the proposed plan of financing, which included

a \$47,613 line of credit with Murray Bank.¹ In Dexter-Almo Heights District's most recent rate case, the Staff Report in that case referenced a letter from Murray Bank dated November 23, 2005, that stated that Dexter-Almo Heights District's total line of credit was for \$150,000, instead of the \$47,613 approved in Case No. 2006-00420, and was renewable on a two-year term.²

Respondents submitted an Offer of Settlement for the Commission's consideration on April 8, 2019. The Offer of Settlement, attached hereto as an Attachment, provides for remedial action by each Respondent in full settlement of this proceeding. In complete resolution of this proceeding, the Commission shall assess each Respondent a penalty of \$500, which shall be suspended for two years and vacated at the end of the two years if Respondents do not engage in any conduct in violation of KRS Chapter 278, a lawfully promulgated regulation, or lawful Order of the Public Service Commission.³

If during the suspension period, a Respondent fails to comply with an Order of the Commission or a provision of KRS Chapter 278 or a lawfully promulgated Commission regulation, the penalty assessed against the Respondent shall become immediately due and payable. The Commission will not assess any penalty or fine against Dexter-Almo Heights District for the alleged violations of KRS 278.300. The Offer of Settlement proposes that the Commission should not make a finding that any Respondent willfully

¹ Case No. 2006-00420, *Application of Dexter-Almo Heights Water District for (1) Issuance of a Certificate of Public Convenience and Necessity Authorizing the Construction of the Flint & Coles Campground Project No. Wx21035012; and (2) Approval of Its Proposed Plan of Financing the Project*, (Ky. PSC Nov. 21, 2006).

² Case No. 2017-00191, *Electronic Application of Dexter-Almo Heights Water District for Alternative Rate Adjustment* (Ky. PSC Sept. 27, 2017) Staff Report at 5.

³ Respondent Dexter-Almo Heights District's Offer of Settlement (filed April 8, 2019), paragraphs 1-2.

violated KRS 278.300 or willfully aided and abetted a violation of KRS 278.300. The Commission agrees with this proposal. The Respondents will attend 12 hours of certified water management training for each calendar year they continue to hold the office of water district commissioner.⁴

The Offer of Settlement contains a resolution in which the Dexter-Almo Heights District Board of Commissioners adopted a resolution that revised the policy of the utility regarding the training of water commissioners and proof of attendance.⁵

Finally, the Offer of Settlement states that the Respondents individually and jointly waive their right to a hearing.⁶

As discussed in previous Orders, the Commission finds that the practice of borrowing money while subjecting water district assets to a possible sale to satisfy unauthorized indebtedness not only violates KRS 278.300, but also unreasonably subjects the ratepayer to the risk of loss of service and to a burden through increased rates to pay off unauthorized debt.⁷

Water districts and their commissioners have been put on notice that unauthorized debt incurred may result in substantial civil penalties being assessed and collected against them in future show cause cases.⁸

⁴ *Id.* paragraphs 3–6.

⁵ *Id.* paragraphs 7–8.

⁶ *Id.* paragraph 9.

⁷ Case No. 2017-00469, *Jonathan Creek Water District and its Individual Commissioners, Jimmy Tubbs, Barry Hill, Josh Medley, Mark Holt, and Kara Wilson*, (Ky. PSC, Sept. 17, 2018), at 8.

⁸ *Id.*

In determining whether the terms of the Offer of Settlement are in the public interest and are reasonable, the Commission has taken into consideration the circumstances surrounding the alleged violation and the terms of the Offer of Settlement. Based upon the evidence in the record, and being otherwise sufficiently advised, the Commission finds that the Offer of Settlement is in accordance with the law and does not violate any regulatory principle. The Offer of Settlement is in the public interest and results in a reasonable resolution of all issues in this case.

IT IS THEREFORE ORDERED that:

1. The Offer of Settlement is adopted and approved in its entirety as a complete resolution of all issues in this case.

2. Each Respondent shall be assessed a penalty of \$500, which shall be suspended for two years and vacated at the end of the two years if the Respondents do not engage in any conduct in violation of KRS Chapter 278, a lawfully promulgated regulation, or lawful Order of the Public Service Commission.

3. If during the suspension period a Respondent fails to comply with an Order of the Public Service Commission, a provision of KRS Chapter 278 or a lawfully promulgated Public Service Commission regulation, the penalty assessed against that Respondent shall become immediately due and payable.

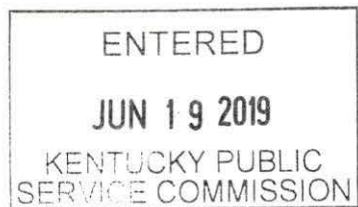
4. If a Respondent ceases to hold the office of water district commissioner during the suspension period as a result of resignation, failure to obtain reappointment or other reason, the suspended penalty assessed against that Respondent shall be vacated immediately upon their departure from office, and contingent on the Respondent not being reappointed within one year of the date of this Order.

5. The Commission will not assess any penalty or fine against Dexter-Almo Heights District for the alleged violations of KRS 278.300.

6. This case shall be closed and removed from the Commission's docket without further Order of the Commission.

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By the Commission



ATTEST:


Executive Director

ATTACHMENT

ATTACHMENT TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2017-00468 DATED **JUN 19 2019**

ELEVEN PAGES TO FOLLOW

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

DEXTER-ALMO HEIGHTS WATER)
DISTRICT AND ITS INDIVIDUAL)
COMMISSIONERS, JOE DAN TAYLOR,)
CHARLES BOREN, AND PAT PASCHALL)
_____) **CASE NO. 2017-00468**
)
ALLEGED FAILURE TO COMPLY WITH)
KRS 278.300)

OFFER OF SETTLEMENT

Dexter-Almo Heights Water District (“Dexter-Almo District”), Commissioner Joe Dan Taylor, Commissioner Charles Boren, and Commissioner Pat Paschall (“Respondent Commissioners”) (collectively “Respondents”) submit the following Offer of Settlement to resolve this matter.

The Respondents proposed that this matter be resolved in the following matter:

1. The Public Service Commission shall assess each Respondent Commissioner a penalty of \$500, which shall be suspended for a period of two years and be vacated at the end of that two-year period if the Respondent Commissioner does not engage in any conduct that is a violation of KRS Chapter 278 or a lawfully promulgated regulation or lawful Order of the Public Service Commission.

2. If during the suspension period, a Respondent Commissioner fails to comply with an Order of the Public Service Commission or a provision of KRS Chapter 278 or a lawfully promulgated Public Service Commission regulation, the penalty assessed against such Respondent Commissioner shall become immediately due and payable.

3. If during the suspension period a Respondent Commissioner ceases to hold the office of water district commissioner as a result of resignation, failure to obtain reappointment or other reason, the suspended penalty assessed against him shall be vacated immediately upon his departure from office.

4. No penalty shall be assessed against Dexter-Almo District.

5. The Public Service Commission will not enter any Order in this proceeding in which it finds that any Respondent willfully violated KRS 278.300 or willfully aided and abetted a violation of KRS 278.300.

6. Each Respondent Commissioner will attend 12 hours of certified water management training each calendar year in which he continues to hold the office of water district commissioner.

7. Dexter-Almo District will adopt and enforce the attached policies regarding mandatory commissioner attendance at accredited water management training programs and the issuance of evidences of indebtedness.

8. Should Dexter-Almo District modify or rescind either of the attached policies, it will notify the Public Service Commission in writing at least 30 days in advance of the proposed modification or rescission.

9. If this Offer of Settlement is accepted, Respondents individually and jointly waive their right to a hearing in this matter and will not petition the Public Service Commission for rehearing or bring an action for review of any order accepting this Offer of Settlement.

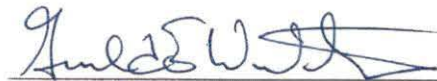
10. Should the Public Service Commission issue an Order accepting this Offer of Settlement and any Respondent fail to comply with the terms of this Offer of Settlement, such Respondent's failure shall be deemed a failure to comply with a lawful order of the Public

Service Commission and such Respondent may be subject to additional penalties pursuant to KRS 278.990(1).

In making this Offer of Settlement, the Respondents do not admit or acknowledge that Dexter-Almo District willfully violated KRS 278.300 or that any Respondent Commissioner aided or abetted any willful violation of KRS 278.300.

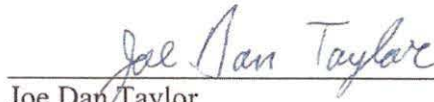
Dated: April 8, 2019

Respectfully submitted,



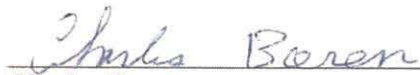
Gerald E. Wuetcher
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Stoll Keenon Ogden PLLC
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Counsel for Respondents



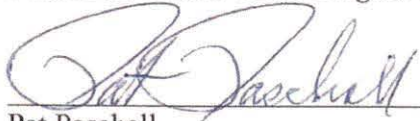
Joe Dan Taylor
Dexter-Almo Heights Water District

Chair, Dexter-Almo Heights Water District



Charles Boren
Dexter-Almo Heights Water District

Treasurer, Dexter-Almo Heights Water District



Pat Paschall
Dexter-Almo Heights Water District

Secretary, Dexter-Almo Heights Water District

CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that the Respondents' electronic filing of this Offer of Settlement is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Public Service Commission on April 8, 2019; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that on or before April 10, 2019 this Application in paper medium will be delivered to the Public Service Commission.

A handwritten signature in cursive script, reading "Gerald E. Wuetcher". The signature is written in black ink and is positioned above a horizontal line.

Gerald E. Wuetcher

ATTACHMENT A

**POLICY REGARDING MANDATORY ANNUAL ATTENDANCE AT
ACCREDITED WATER MANAGEMENT TRAINING**

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF
DEXTER-ALMO HEIGHTS WATER DISTRICT TO ESTABLISH A
POLICY REGARDING COMMISSIONER ATTENDANCE AT
WATER MANAGEMENT TRAINING PROGRAMS**

WHEREAS, Dexter-Almo Heights Water District is a water district organized pursuant to KRS Chapter 74;

WHEREAS, KRS 74.020 requires persons newly appointed to a water district's board of commissioners to attend an initial training program that the Public Service Commission conducts and further requires water districts to take certain actions to promote and encourage the members of its board of commissioners to attend certified water district management training programs to enhance the member's understanding of his or her responsibilities and duties;

WHEREAS, establishing a written policy regarding the training of the members of Dexter-Almo Heights Water District's Board of Commissioners will promote compliance with KRS 74.020, will encourage board members to attend useful water management training programs, and will lead to a more knowledgeable and better informed Board of Commissioners;

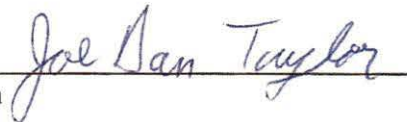
NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF COMMISSIONERS OF DEXTER-ALMO HEIGHTS WATER DISTRICT AS FOLLOWS:

Section 1. The facts, recitals, and statements contained in the foregoing preamble of this Resolution are true and correct and are hereby affirmed and incorporated as a part of this Resolution.

Section 2. The policy regarding the training of the members of the Board of Commissioners, which is attached to this resolution as Exhibit A, is established and effective as of this date and shall be observed by this Board of Commissioners and all employees of Dexter-Almo Heights Water District.

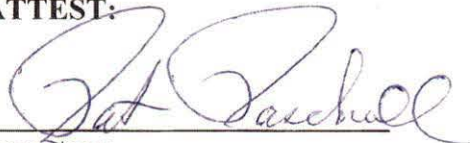
ADOPTED BY THE BOARD OF COMMISSIONERS OF DEXTER-ALMO HEIGHTS WATER DISTRICT at a meeting held on April 4, 2019, signed by the Chairman, and attested by the Secretary.

Chairman



ATTEST:

Secretary



DEXTER-ALMO HEIGHTS WATER DISTRICT

TRAINING – MEMBERS OF BOARD OF COMMISSIONERS

MANDATORY TRAINING – NEWLY APPOINTED COMMISSIONERS

KRS 74.020(8) requires newly appointed members of a water district's board of commissioners to attend at least twelve (12) hours of instruction "that is intended to train newly appointed commissioners in the laws governing the management and operation of water districts and other subjects that the Public Service Commission deems appropriate." A newly appointed member must attend such training within 12 twelve months of his or her appointment. A member who fails to complete such a program of instruction within twelve (12) months of his or her initial appointment shall forfeit his or her office and all right to act in discharge of the duties of the office. Currently only initial training programs that the Public Service Commission conducts will satisfy this requirement. Upon a member's initial appointment, he or she shall be advised of this training requirement and the times and locations of scheduled training programs and shall be encouraged to attend one of these programs at the earliest possible date.

RETURNING COMMISSIONER TRAINING

KRS 74.020(7) provides that a member of a water district board of commissioners who completes during a calendar year a minimum of six (6) instructional hours of water district management training approved by the Public Service Commission may receive an annual salary of not more than six thousand dollars (\$6,000) to be paid out of water district funds. Currently the Calloway Fiscal Court has not authorized an enhanced annual salary for members of a water district board of commissioners who attend a minimum of six (6) instructional hours of such instruction. Notwithstanding the lack of the opportunity for an enhanced salary, attendance at certified water district management training programs will result in a better informed board members and better management practices. Accordingly, **all members of the Water District's Board of Commissioners will attend at least twelve (12) hours of certified water district management training annually.** A board member may be excused from this requirement if he or she does not serve the entire calendar year, but will not be excused if Calloway Fiscal Court authorizes an enhanced salary and the member receives such enhanced salary.

PROOF OF ATTENDANCE

Upon attending a certified water district management training program, the board member shall provide a copy of his or her certificate of attendance or other evidence of attendance and completion to the Board's Secretary. The Board Secretary or his or her designate will maintain these records in the Water District's files. No reimbursement of travel expenses or final payment of any enhanced salary, shall be made until such evidence is presented.

REIMBURSEMENT OF EXPENSES

The Water District will reimburse a member of a water district for his or her reasonable expenses for attending a certified water district management training program. These expenses include reasonable travel and lodging expenses and program registration fees. A board member shall

make all efforts to attend programs that are cost-effective and within a reasonable distance of the Water District's offices. Reimbursement shall only be made after the board member has presented evidence of his or her attendance and completion of the certified water management training program.

REVIEW

The Board of Commissioners shall review this policy annually and shall note such review in the minutes of the regular meeting in which the review was conducted.

REFERENCES

KRS 278.020

Adopted: 4-4-19

ATTACHMENT B

POLICY REGARDING ISSUANCE OF EVIDENCES OF INDEBTEDNESS

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF
DEXTER-ALMO HEIGHTS WATER DISTRICT TO ESTABLISH A
POLICY REGARDING THE ISSUANCE OF DEBT AND
BORROWING OF FUNDS**

WHEREAS, Dexter-Almo Heights Water District is a utility subject to the jurisdiction and regulation of the Kentucky Public Service Commission;

WHEREAS, KRS 278.300 provides that “[n]o utility shall issue any securities or evidences of indebtedness, or assume any obligation or liability in respect to the securities or evidences of indebtedness of any other person until it has been authorized so to do by order of the [Public Service C]ommission”

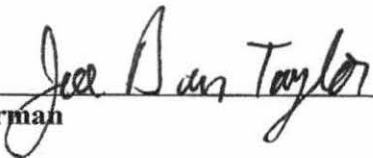
WHEREAS, establishing a written policy regarding the issuance of evidences of indebtedness and securities will assist Dexter-Almo Heights Water District in complying with KRS 278.300 and avoiding potentially embarrassing violations of that statute;

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF COMMISSIONERS OF DEXTER-ALMO HEIGHTS WATER DISTRICT AS FOLLOWS:


Section 1. The facts, recitals, and statements contained in the foregoing preamble of this Resolution are true and correct and are hereby affirmed and incorporated as a part of this Resolution.

Section 2. The policy regarding the issuance of evidence of indebtedness and borrowing of funds, which is attached to this resolution as Exhibit A, is established and effective as of this date and shall be observed by this Board of Commissioners and all employees of Dexter-Almo Heights Water District.

ADOPTED BY THE BOARD OF COMMISSIONERS OF DEXTER-ALMO HEIGHTS WATER DISTRICT at a meeting held on March 7, 2019, signed by the Chairman, and attested by the Secretary.


Chairman

ATTEST:


Secretary

DEXTER-ALMO HEIGHTS WATER DISTRICT

FISCAL MANAGEMENT

Issuance of Debt/Borrowing Funds

PUBLIC SERVICE COMMISSION AUTHORIZATION

KRS 278.300 requires a utility to obtain Public Service Commission authorization prior to its issuance of any securities or evidences of indebtedness, or the assumption of any obligation or liability with respect to another's securities or evidences of indebtedness. Evidences of indebtedness include: promissory notes, bonds, installment purchase agreements, or any contract in which the Water District agrees to pay a sum of money over an extended period of time. The Water District will not issue any evidence of indebtedness or securities or assume any obligation or liability with respect to the securities or evidences of indebtedness of another without first obtaining written authorization from the Public Service Commission for such issuance.

EXCEPTION(S)

The Water District may issue notes for proper purposes and not in violation of law, that are payable at periods of not more than two (2) years from the date thereof, or to like notes, payable at a period of not more than two (2) years from date thereof, that are issued to pay or refund in whole or in part any such notes, or to renewals of such notes from time to time, not exceeding in the aggregate six (6) years from the date of the issue of the original notes so renewed or refunded.

LEGAL REVIEW

Prior to issuing any securities or evidences of indebtedness, or assuming any obligation or liability in respect to the securities or evidences of indebtedness of any other person, the Water District shall consult with legal counsel to determine if the Water District must obtain the Public Service Commission's prior approval to issue the securities, borrow the money, or assume another's obligations or liabilities. The Water District shall obtain and maintain in its records written evidence of counsel's advice regarding the proposed issuance.

REVIEW

The Board of Commissioners shall review this policy annually and shall note such review in the minutes of the regular meeting in which the review was conducted.

REFERENCES

KRS 278.300

Adopted: 3-7-19

*Dexter-Almo Heights Water District
351 Almo Road
Almo, KY 42020

*Dexter-Almo Heights Water District
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351 Almo Road
Almo, KY 42020

*Pat Paschall
Commissioner
Dexter-Almo Heights Water District
351 Almo Road
Almo, KY 42020

*Joe Dan Taylor
Commissioner
Dexter-Almo Heights Water District
351 Almo Road
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