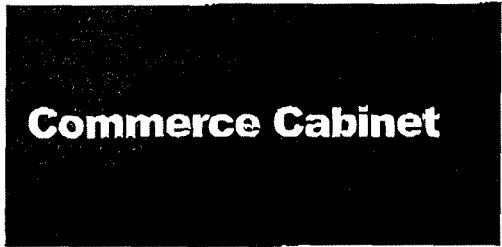


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BEFORE THE PUBLIC SERVICE COMMISSION

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KENTUCKY DAM VILLAGE)
STATE RESORT PARK,)
KENTUCKY DEPARTMENT OF PARKS,)
COMMERCE CABINET,)

COMPLAINANT)

vs.)

NORTH MARSHALL WATER DISTRICT,)

DEFENDANT)

CASE NO.:06-365

BRIEF

Comes now Complainant, Kentucky Dam Village State Resort Park, Kentucky Department of Parks, Commerce Cabinet, (KDV) and pursuant to the Commission's Order of October 5, 2006 states as follows:

BACKGROUND

This matter stems from a late fee charged by Defendant, North Marshall Water District to KDV of 10% in May 2006. KDV, is a park within the Kentucky Department of Parks, an agency of the Commerce Cabinet, a programmatic Cabinet of the Commonwealth of Kentucky. The bill was sent by North Marshall on April 28, 2006 with a due date listed of May 12, 2006. Payment was sent on May 9, 2006. North Marshall claims that payment was received after May 12, 2006.

ARGUMENT

North Marshall charged a 10% late fee in violation of KRS 45.453 and KRS 45.454. KRS 45.450 et. seq. sets forth a scheme for State Purchasing. KRS 45.453 specifically provides a time period for payment for services received by the

Commonwealth and specifically states, “[a]ll bills shall be paid within thirty (30) working days of receipt of goods and services or a vendor's invoice except when the purchasing agency has transmitted a rejection notice to the vendor.” Any bill not paid within thirty days shall accrue a late fee as set out in KRS 45.454 which states, “An interest penalty of one percent (1%) of any amount approved and unpaid shall be added to the amount approved for each month or fraction thereof after the thirty (30) working days which followed receipt of the goods or services or vendor's invoice by a purchasing agency.” In accordance with these statutes, KDV paid the invoice within thirty days of receipt. Even if the payment had been late, a 10% fee is far in excess of the late fee proscribed by KRS 45.454.

North Marshall apparently relies on KRS 278.160 to charge the late fee of 10% for a payment received after the due date. KRS 278.160 states in part

(1) Under rules prescribed by the commission, each utility shall file with the commission, within such time and in such form as the commission designates, schedules showing all rates and conditions for service established by it and collected or enforced. The utility shall keep copies of its schedules open to public inspection under such rules as the commission prescribes.

(2) No utility shall charge, demand, collect, or receive from any person a greater or less compensation for any service rendered or to be rendered than that prescribed in its filed schedules, and no person shall receive any service from any utility for a compensation greater or less than that prescribed in such schedules.

North Marshall contends that these statutes conflict and that KRS 278.160 and the regulations promulgated by the PSC should control. KDV disagrees.

KRS 278.160 should not be read to apply to state purchasing at all. The Courts have held that “The state...is not to be considered within the purview of a statute,

however general and comprehensive the language of such act may be, unless expressly named therein, or included by necessary implication.” Commonwealth v. Allen 32 S.W.2d 42 (Ky. 1930) *citing* 36 Cyc. 1171 The laws contained in KRS 45.453 and KRS 45.454, on the other hand, apply specifically to state purchasing.

The Courts have long held that where two statutes conflict, they should be construed as to give meaning to both. Thorn v. Commonwealth 181 S.W.3d 560, 561 (Ky. App. 2005); Hopkinsville-Christian County Planning Comm’n v. Christian County Bd. of Ed. 903 S.W.2d 531, 532 (Ky. App. 1995). If meaning is given to both statutes in this context, KRS 45.453 and KRS 45.454 must govern all payments of invoices by the Commonwealth, as is specifically stated by the statute. KRS 278.160 would still effectively prescribe a regime under which Public Utilities file rate schedules, but those schedules must conform with KRS 45.453 and KRS 45.454 when related to the Commonwealth.

If the Commission finds that there is an irreconcilable conflict, the rules of statutory construction support the strict application of KRS 45.453 and KRS 45.454 in this instance. The Supreme Court in Travelers Indemnity Company v. Reker 100 S.W.3d 756, 763 (Ky. 2003) stated, “If two statutes are irreconcilable, the later enactment prevails.” KRS 45.453 and KRS 45.454 were originally passed in 1984. 1984 Ky. Acts ch. 4, sec. 21 and 1984 Ky. Acts ch.61 sec. 4. KRS 278.160 was recodified in 1942. 1942 Ky. Acts ch. 208, sec.1, from Ky. Stat. secs. 3952-30, 3952-31. Thus, KRS 45.453 and KRS 45.454 prevail.

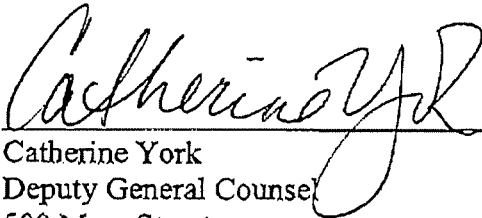
The second rule of statutory construction is that “when two statutes are in conflict, one of which deals with the subject matter in a general way and the other in a specific

way, the more specific provision prevails.” Travelers Indemnity Company v. Reker 100 S.W.3d 756, 763 (Ky. 2003) KRS 278.160 deals generally with the posting of rate schedules. KRS 45.453 and KRS 45.454 specifically apply to state purchasing. Thus, KRS 45.453 and KRS 45.454 prevail.

CONCLUSION

KDV paid their water bill in conformity with KRS 45.453, a statute governing state purchasing. North Marshall charged a late fee pursuant to KRS 278.160. Because KRS 45.453 is the legislature’s most recent iteration of law, is the more specific of the two statutes and is the one that specifically references the Commonwealth, that statute must prevail. As such, KDV should not be charged a late fee.

Respectfully submitted by:
COMMERCE CABINET
ELLEN F. BENZING, GENERAL COUNSEL



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Deputy General Counsel
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CERTIFICATE OF SERVICE

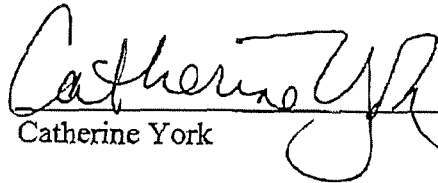
I hereby certify that a true and correct copy of the foregoing was mailed to

Hon. Jason F. Darnall
Assistant County Attorney
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Original to:

Beth O'Donnell
Executive Director
Public Service Commission
PO Box 615
Frankfort, KY 40602

this 20th day of October 2006.


Catherine York