

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CORINTH WATER DISTRICT AND ITS)	
INDIVIDUAL COMMISSIONERS, W.D. FIELD,)	CASE NO.
CHERISH KENNEDY, AND ASHLEY LAUDERMAN)	2022-00061
ALLEGED FAILURE TO COMPLY WITH KRS)	
278.300)	

ORDER

On April 8, 2022, the Commission entered an Order establishing this case to determine whether Corinth Water District (Corinth District) failed to comply with the provisions of KRS 278.300(1) when Corinth District Commissioners W.D. (Dan) Field, Cherish Kennedy, and Ashley Lauderman authorized Corinth District to a \$2,020,000 lease agreement with the Kentucky Bond Corporation for the purpose of refinancing Corinth District’s outstanding federal debt obligations.¹ Corinth District also entered into a loan for a 2017 truck with Huntington Bank note on February 27, 2017, in the amount of \$23,636 for a term of 75 months without prior Commission approval.²

On May 26, 2022, Corinth District and the individual Commissioners filed a joint response to the Commission’s April 8, 2022 opening order. Corinth District responded to

¹ Case No. 2021-00465, *Electronic Application of Corinth Water District for Authorization to Enter into a Financial Obligation* (Ky. PSC Mar. 16, 2022). The original Order included Diane Mincarelli and Shannon Long. The Commission issued an Order on July 1, 2022, dismissing the two persons as they no longer served on the Board of Commissioners.

² Case No. 2021-00425, *Electronic Application of Corinth Water District for a Rate Adjustment Pursuant to 807 KAR 5:076* (filed Nov. 29, 2021), Application, Attachment 4, Table B.

two requests for information.³ On October 20, 2022, Corinth District filed a motion to submit this matter for a decision based upon the existing record. The Commission finds that the record is complete, and the matter stands ready for a decision.

BACKGROUND

Corinth District is a water district organized pursuant to KRS Chapter 74. It operates water distribution facilities that serve approximately 1,209 customers in Grant, Harrison, and Pendleton counties, Kentucky.⁴ It is a utility subject to the Commission's jurisdiction.

Corinth District had a recent rate adjustment, an increase of 10.98 percent.⁵ During the rate case, Commission Staff discovered the loan for the vehicle secured with Huntington Bank.⁶ Corinth District filed an application for approval for the re-financing of the outstanding federal bonds.⁷ As a consequence of those cases, the Commission opened this investigation.

Based on the information provided in both Case No. 2021-00465 and this case, Corinth District asserted that the district acted on advice of counsel in refinancing the lease agreement. The Corinth District provided an opinion letter⁸ claiming that all

³ Commission Staff's First Request for Information (Staff's First Request) was issued on June 3, 2022, and Corinth District filed a response on June 22, 2022. Commission Staff's Second Request for Information (Staff's Second Request) was issued on July 25, 2022, and Corinth District filed a response on Aug. 12, 2022.

⁴ *Annual Report of Corinth District to the Public Service Commission for the Calendar Year Ended December 31, 2021* at 12, 53.

⁵ Case No. 2021-00425, May 25, 2022 Order.

⁶ Case No. 2021-00425, May 25, 2022 Order.

⁷ Case No. 2021-00465, Dec. 22, 2021 Application.

⁸ Corinth District's Response to Commission's April 8, 2022 Order (filed on May 26, 2022), Exhibit A at 3.

necessary approvals would be or had been obtained. According to the Corinth District's response, only after the letter from an attorney did the Corinth District enter into the refinancing agreement.⁹

In response to the allegations involving the purchase of the truck, which was discovered in Case No. 2021-00425, the Corinth District alleged that the manager, William Hill, acted on his own to obtain the truck and signed for the loan without prior approval of the Corinth District's board. William Hill is still employed by the Corinth District but as a part-time employee.¹⁰ He is no longer in a position of authority, and the truck is currently used by the Corinth District. According to documentation, Mr. Hill did not obtain any prior approval from the board, but he did inform them of the truck purchase after he had already signed the loan documents.¹¹ Currently, the truck is in use by the utility for business purposes.¹²

LEGAL STANDARD

KRS 278.300 states 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 commission.” KRS 278.300(8) provides an exception for notes for a proper purpose that are payable in two years or less. Pursuant to KRS 74.020(1), the named

⁹ Corinth District's Response to Commission's April 8, 2022 Order.

¹⁰ Corinth District's Response to Staff's Second Request at 6.

¹¹ Corinth District's Response to Staff's First Request, Attachments to First Response.

¹² Corinth District's Response to Staff's Second Request, Item 3.

commissioners are responsible for the control and management of the affairs of the Corinth District.

KRS 278.990 (1) provides:

Any officer, agent, or employee of a utility, as defined in KRS 278.010, and any other person who willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or fails to obey any order of the commission from which all rights of appeal have been exhausted, or who procures, aids, or abets a violation by any utility, shall be subject to either a civil penalty to be assessed by the commission not to exceed two thousand five hundred dollars (\$2,500) for each offense or a criminal penalty of imprisonment for not more than six (6) months, or both. If any utility willfully violates any of the provisions of this chapter or any regulation promulgated pursuant to this chapter, or does any act therein prohibited, or fails to perform any duty imposed upon it under those sections for which no penalty has been provided by law, or fails to obey any order of the commission from which all rights of appeal have been exhausted, the utility shall be subject to a civil penalty to be assessed by the commission for each offense not less than twenty-five dollars (\$25) nor more than two thousand five hundred dollars (\$2,500). Each act, omission, or failure by an officer, agent, or other person acting for or employed by a utility and acting within the scope of his employment shall be deemed to be the act, omission, or failure of the utility.

FINDINGS AND DISCUSSION

Based upon the case record, the Commission concludes that there is a clear violation of KRS 278.300 by Corinth District for failure to obtain approval for the issuance of indebtedness for the truck and the refinancing of the bonds. In each of these occurrences, Corinth District issued an evidence of indebtedness, payable over a period greater than two years, without receiving prior Commission approval.¹³

¹³ See Case No. 2021-00465, Corinth Water District (filed Jan. 18, 2022), Application at unnumbered page 94, and Exhibit A. The Huntington Bank note was for a term of 75 months (and the bond lease agreement termination date was February, 1, 2045, resulting in a term of over 23 years).

The Refinancing of Bonds

Throughout this proceeding, Corinth District and the named commissioners have maintained that they should not be subject to penalty pursuant to KRS 278.990, as they relied on advice of their bond counsel (Bond Counsel)¹⁴ in leasing the bonds, and that any violation of KRS 278.300 for failure to obtain approval for the issuance of indebtedness was not a “willful violation”.¹⁵ However, no one disputes that the district did not obtain prior authorization for the indebtedness.

Corinth District and the named commissioners claimed that there was neither a willful violation of the Commission statute, nor an intentional failure to obtain the Commission's approval for the indebtedness; nonetheless, a violation of the statute occurred. While a willful violation has been defined as an act that is committed intentionally, not accidentally or involuntarily,¹⁶ it has also been stated that a willful violation does not necessarily and solely entail an intention to do wrong and inflict injury but may include conduct which reflects an indifference to its natural consequences.¹⁷ For civil and administrative proceedings, a willful violation has been explained as one which

¹⁴ Case No. 2021-00465, Corinth District's Response to Staff's First Request Item 1. Exhibit D.

¹⁵ Corinth District's Response to Commission's April 8, 2022 Order at 5, citing the Commission's Feb. 23, 2017 Order in Case No. 2016-00338, *Wood Creek Water District and Its Individual Commissioners, Glenn Williams, Earl Bailey, and Jimmy Keller Alleged Failure to Comply with KRS 278.300(1)*.

¹⁶ Case No. 1992-00016, *M.A. V.I.S.S., Inc. and Mr. Darby Alleged Failure to Comply with Commission Regulations* (Ky. PSC July 1, 1992).

¹⁷ Case No. 1993-00044, *Jackson Purchase Electric Cooperative Corporation, Inc. Alleged Failure to Comply with Commission Regulations* (Ky. PSC), citing *Huddleston v. Hughes*, 843 S.W.2d 901, 905 (Ky. App. 1992).

is intentional, knowing, voluntary, deliberate or obstinate, although it may be neither malevolent nor with the purpose to violate the law.¹⁸

Here, the testimony of the manager, Tara Wright, acknowledged that a violation did occur, as the named commissioners voted to approve a resolution to enter into financing, and ultimately issued indebtedness, as evidenced by the Lease Agreement.¹⁹ Therefore, the Commission finds that Corinth District and the named commissioners intentionally, knowingly, and voluntarily issued indebtedness prior to authorization by the Commission, and that they are subject to penalties pursuant to KRS 278.990 for violation of KRS 278.300.

The Commission further finds no merit to the contention of Corinth District and the named commissioners that their actions were not willful because they relied upon advice of counsel. While good faith reliance on advice of counsel is a defense against the violation of certain statutes that provide such exceptions for reasonable cause, the Commission has found that no language is provided for in KRS 278.990 allowing for such an exception.²⁰

The Commission does acknowledge, however, that Corinth District and the named commissioners had a reasonable and good faith expectation that Bond Counsel would advise them if Commission approval were required for the underlying financing. Corinth District's rate payers should not be required to bear the legal and other expenses incurred

¹⁸ Case No. 1999-00001, *Bluegrass Gas Sales, Inc., Alleged Violation of KRS 278.300* (Ky. PSC July 8, 1999) at 5, citing *Woods v. Carsey*, 200 P.2d 208 (Cal. App. 1948).¹

¹⁹ Case No. 2021-00465, Jan. 18, 2022 Application, Exhibit A.

²⁰ Case No. 1999-00001, *Bluegrass Gas Sales, Inc. Alleged Violation of KRS 278.300* (Ky. PSC July 8, 1999).

as a result of this proceeding. Accordingly, the Commission would encourage Corinth District and the named commissioners to look to their Bond Counsel for payment or reimbursement of any expenses incurred in relation to this proceeding.

2017 Truck Loan

On February 27, 2021, Mr. William Hill, as manager, secured a 2017 Chevrolet truck with a Huntington Bank loan in the amount of \$23,636 for a term of 75 months without prior Commission approval. The documents provided by Corinth District were signed by Mr. Hill.²¹ According to the response, the named commissioners were made aware of the purchase on March 1, 2017.²² At no time did Corinth District or the named commissioners request authorization from the Commission to enter into the indebtedness for the 2017 Chevrolet Colorado. According to a data response, when Tara Wright began as manager for Corinth District, she continued to make the payments and did not question the expenditure.²³

Although each case must be examined individually, the Commission has two goals in mind when issuing a final Order in an investigation into a violation of KRS 278.300. First, the Commission's goal has been to obtain compliance with the requirements of the statute and not to merely exact a penalty. Second, the Commission seeks to put utilities and commissioners on notice that certain actions place the utility and individual commissioners out of compliance with applicable statutes and regulations and that future

²¹ Corinth District's Response to Staff's First Request, Attachment to Item 1.

²² Corinth District's Response to Staff's First Request, Attachment to Item 1.

²³ Corinth District's Response to Staff's First Request, Item 2.

violations could result in individual penalties as well as a separate penalty against the utility.

In this case, only one member of the current board of commissioners served Corinth District for both of these violations: Corinth District Chairman Dan Field.,. Not only did Mr. Field serve during the period of the two violations in this case, but Mr. Field has also been previously reprimanded for a violation of KRS 278.300.²⁴ In that matter, he elected to pay a fine instead of attending mandatory training.²⁵ Mr. Field could have benefitted from the training the Commission sponsors throughout the state during the year. As a long-serving member of the board of commissioners,²⁶ Mr. Field has the opportunity to demonstrate a consistent and knowledgeable voice in his guidance to fellow commissioners about Commission regulations.

The Commission is profoundly disappointed to learn that Mr. Field, who should have certainly understood his obligation to comply with KRS 278.300 because of his involvement in the 2012 incident in Case No. 2013-00187, has twice again been involved with Corinth District's failure to comply with KRS 278.300. Because of his involvement in three incidents of Corinth District issuing unapproved debt, the Commission has concerns about Mr. Field's ability to make informed, responsible decisions. It appears to the Commission that Mr. Field does not fully appreciate his role in ensuring Corinth District complies with all applicable statues, Commission regulations, and Commission orders.

²⁴ Case No. 2013-00187, *Corinth Water District's Alleged Failure to Comply with KRS 278.300* (Ky. PSC Oct. 21, 2013).

²⁵ Case No. 2013-00187, Oct. 21, 2013 Order at 3.

²⁶ According to the Annual Reports filed by Corinth District, Mr. Field has served on the board of commissioners since at least 1993.

The Commission finds that Corinth District Chairman Dan Field should attend 12 hours of Commission-approved training within one year of service of this Order. As a result of the multiple violations occurring under his tenure, the Commission also finds that Mr. Field should be assessed a civil penalty of \$500. to be paid within 90 days of the date of service of this Order. The Commission expects that Mr. Field will use the opportunity to improve the policies and procedures of Corinth District in conjunction with other members of the board and the manager. However, the Commission also intends for this Order to serve as notice that no further violations involving Mr. Field will be tolerated.

The Commission finds that Corinth District Commissioners Cherish Kennedy and Ashley Lauderman should attend 12 hours of Commission approved training within a year of the date of service of this Order. Although these board members were not involved with the 2017 truck loan, they were on the board for refinancing the bonds. The Commission intends this training to assist and educate the newer commissioners in order to attempt to prevent any further violations of KRS 278.300 or any applicable statutes or regulations.

The Commission finds that the practice of borrowing money subjects the ratepayer to an unreasonable risk of loss of service and to an unacceptable burden through increased rates to pay off unauthorized debt. Any unauthorized debt incurred after the date of service of this order may well result in substantial civil penalties being assessed and collected against all parties in future show cause cases.

IT IS THEREFORE ORDERED that:

1. Corinth District Chairman Dan Field is assessed a civil penalty for his willful violation of KRS 278.300.

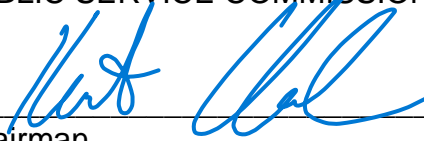
2. Dan Field shall pay the assessed penalty of \$500 within 90 days of service of this Order. Payment shall be made by certified check or money order made payable to Kentucky State Treasurer and shall be mailed or delivered to the Office of General Counsel, Kentucky Public Service Commission, 211 Sower Boulevard, P.O. Box 615, Frankfort, Kentucky, 40602-0615.

3. Dan Field shall attend 12 hours of Commission approved training within one year of the date of service this Order for his willful violation of KRS 278.300.

4. Corinth District Commissioners Cherish Kennedy and Ashley Lauderman shall attend 12 hours of Commission approved training within one year of the date of service of this Order for their respective willful violations of KRS 278.300.

5. This case is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION


Chairman

Vice Chairman


Commissioner



ATTEST:


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