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Commonwealth of Kentucky
Environmental and Public Protection Cabinet
Public Service Commission

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August 24, 2004

Thomas R. Neinaber, Esq.
The Horwitz Law Firm, P.S.C.
541 Buttermilk Pike
Suite 305
Crescent Springs, Kentucky 41017-1689

Re: Grant County Sanitary Sewer District

Dear Mr. Nienaber:

Commission Staff acknowledges receipt of your letters of November 24, 2003 and April 26, 2004, in which you inquire about the extent of the Public Service Commission's jurisdiction over the Grant County Sanitary Sewer District.

You present the following facts:

On October 7, 2002, Grant County Fiscal Court adopted an ordinance creating the Grant County Sanitary Sewer District ("Sewer District"). In its ordinance, Fiscal Court designated the territorial boundaries of the Sewer District to include "all unincorporated areas of Grant County and directed the Sewer District to develop, implement, and maintain local sanitary sewer management for Grant County." It declared the Sewer District to "be an organizational unit of county government attached to the Office of County Judge/executive" and that the Sewer District had "primary jurisdiction, responsibility, and authority for all matters pertaining to the management and operation of a sanitary sewer district within Grant County." The Fiscal Court further declared that the Sewer District should "be managed by Bullock Pen Water District."

On April 22, 2004, the Sewer District completed negotiations with the City of Crittenden, Kentucky, for the purchase and transfer of that city's sanitary sewer system, including transmission and collection lines, pumps, and

Thomas R. Neinaber, Esq.
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sewage treatment facilities. Under the terms of this agreement, the Sewer District purchased the City's facilities in return for assuming the City's outstanding bond indebtedness of approximately \$1.5 million.

Upon the transfer of the City's assets to the Sewer District, the Sewer District intends to contract with Bullock Pen Water District for the management and operation of the sewage collection, transmission, and treatment facilities. Ultimate control and responsibility for the facilities' operation and management will remain with the Sewer District's Board of Commissioners.

Your letter presents the following issue: Is the Sewer District a utility subject to the regulation of the Public Service Commission?

Based upon its review, Commission Staff is of the opinion that the Sewer District is a utility as defined by KRS 278.010(3)(f) and is subject to Commission jurisdiction. Given the uncertainty as to whether Grant County Fiscal Court intended to invest the Sewer District with the powers of a sanitation district, however, Commission Staff's opinion is subject to revision.

The Public Service Commission regulates the rates and service of all public utilities. KRS 278.040(2). A utility is

any person except . . . a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with . . . [t]he collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220.

KRS 278.010(3)(f).

The Sewer District appears to meet the definition of "utility." As a special district, the Sewer District is a municipal corporation. See, e.g., Rash v. Louisville & Jefferson County Metropolitan Sewer District, 309 Ky. 442, 217 S.W.2d 232 (1948). As a municipal corporation, it is a "corporation" and a "person" for purposes of KRS Chapter

278. KRS 278.010(1) and (2). Given its recent acquisition from Crittenden, it owns sewage collection, transmission and treatment facilities.

The Sewer District does not appear to qualify for the "sanitation district" exemption set forth in KRS 278.010(3)(f). That statute expressly exempts "any sanitation district created pursuant to KRS Chapter 220." In Oldham County Sanitation District v. Public Service Comm'n, No. 2001-CA-001482-MR (Ky. Ct. Apps. July 12, 2002), the Kentucky Court of Appeals held that the exemption also covered sanitation districts created pursuant to KRS 67.715(2)¹ and regulated by the provisions of KRS Chapter 220. In the present case, Grant Fiscal Court created the Sewer District pursuant to KRS 67.715(2), not KRS Chapter 220. When creating the Sewer District, it made no provision that KRS Chapter 220 would govern the Sewer District's operations.

In OAG Opinion 83-292, a copy of which is enclosed, the Attorney General noted that two types of sewer districts could be formed using KRS Chapter 67.715(2) – districts governed by either KRS Chapter 74 or KRS Chapter 220. "Where the county judge executive and fiscal court desire to create a . . . [sanitation] district pursuant to KRS 67.715(2)," the Attorney General opined, "the orders of the county judge executive and fiscal court should be carefully worded to disclose the intended creation of a sewer district, as treated in KRS 220.030 to 220.552 in the analogous manner expressed therein, and to the extent that those statutes can be practically applied to a sewer district operation."

In its review of the Grant Fiscal Court Ordinance, Commission Staff has found no references to KRS Chapter 220. Moreover, the Ordinance fails to contain any provisions similar to those in KRS 220.030 to 220.552 regarding the Sewer District's powers and responsibilities or its relationship to Grant County Fiscal Court. The absence of such reference or provision leads us to conclude that Grant County Fiscal Court did not intend for KRS Chapter 220 to govern the Sewer District's operation. As the only references in the Ordinance are to KRS Chapter 74, the language of the Ordinance suggests that Grant Fiscal Court intended to create a sewer district regulated by and subject to the provisions of KRS Chapter 74.

Under the present circumstances, the Sewer District meets the statutory definition of "utility" and is subject to Commission regulation. As the City of Crittenden is not a utility, the Sewer District's acquisition of the Crittenden assets would not require Commission approval. See Northern Kentucky Water District, Case No. 2000-00357

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The county judge/executive or county judges/executive of multicounty districts may, with approval of the fiscal court or fiscal courts, create any special district or abolish or combine any special district, provided the district was created solely by the county judge/executive or county judges/executive or solely by one or more such fiscal courts.

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(Ky.PSC July 20, 2000). KRS 278.300(1),² however, requires the Sewer District to obtain Commission approval of any assumption of liability in respect to evidences of indebtedness of other persons and thus would require the Sewer District to obtain prior commission approval of its assumption of Crittenden's \$1.5 million bonded debt.

Assuming arguendo that KRS Chapter 220 governed the operation of the Sewer District,³ the Sewer District would not be a "utility" and would not be subject to Commission regulation. Although the Sewer District has contracted with Bullock Pen Water District for the day-to-day operation of its sewage facilities, it retains ultimate control over the facilities and thus its jurisdictional status would not be affected.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Assistant General Counsel, at (502) 564-3940, Extension 259.

Sincerely,



Beth O'Donnell
Executive Director

Enclosures

² No 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.

³ In discussions with Commission Staff counsel, the Sewer District's Counsel stated that Grant County Judge/Executive and Fiscal Court intended to create a sanitation district. If they intended to create such a district, KRS 67.715(2) appears to permit them to amend and revise the original ordinance to resolve any doubts regarding the Sewer District's legal status and its powers and responsibilities. Such action would likely have to occur prior to any other action on the Sewer District's part that requires another party to rely upon the Sewer District's present status. Those considering such revisions should also consider OAG Opinion 94-46 in which the Attorney General opines that a fiscal court may not create a Chapter 67 Sanitation District that lacks taxing authority. In the current Ordinance, Grant County Fiscal Court has expressly limited the taxing authority of the Sewer District.

ORDINANCE NO. 26-2002-453

AN ORDINANCE CREATING THE GRANT COUNTY SANITARY SEWER DISTRICT

BE IT ORDAINED BY THE FISCAL COURT OF GRANT COUNTY.

SECTION I:

WHEREAS, the General Assembly of the Commonwealth of Kentucky has enacted KRS 67.715 (2) which permits the County Judge/Executive, with the approval of the Fiscal Court, to create any special district; and

WHEREAS, the fiscal court of Grant County desires to protect and safeguard the property, health, safety, and welfare of the citizens and the environment of Grant County; and

WHEREAS, KRS 67.083 (3) (r) provides that a fiscal court may make provision for water and sewage and garbage disposal service, including management of onsite sewage disposal systems; and

WHEREAS, there presently exists within Grant County a public water district known as Bullock Pen Water District, same having been established and currently operated pursuant to KRS Chapter 74; and

WHEREAS, KRS 74.407 provides that a water district is authorized to acquire, develop, maintain and operate sewage disposal systems within the confines of their districts except operation of same within a municipal area having authority to provide sewer services must be with municipal consent; and

WHEREAS, KRS 74.407 provides that water district commissioners shall have all of the powers and authority as regards sewer systems that are conferred upon them for the purpose of furnishing a water supply under KRS 74.010 to 74.415; and

WHEREAS, the fiscal court of Grant County is of the opinion that the Grant County Sanitary Sewer District should be operated by and in conjunction with Bullock Pen Water District;

NOW, THEREFORE, the fiscal court of Grant County enacts this ordinance which shall be known and may be cited as the "Grant County Sanitary Sewer District Ordinance".

SECTION II:

There is hereby created the Grant County Sanitary Sewer District pursuant to KRS 67.715 (2), 67.083 (3) (r) and the applicable provisions of KRS Chapter 74, which shall serve in the interest of public safety, health and welfare within unincorporated areas of the territorial boundaries of Grant County;

The Grant County Sanitary Sewer District shall develop, implement, and maintain local sanitary sewer management for Grant County in accordance with the provisions of KRS Chapter 74, applicable administrative regulations promulgated by the Commonwealth of Kentucky, and the resolutions, orders or ordinances of the fiscal court of Grant County.

The Grant County Sanitary Sewer District shall be an organizational unit of county government attached to the Office of County Judge/Executive and shall have primary jurisdiction, responsibility, and authority for all matters pertaining to the management and operation of a sanitary sewer district within Grant County.

SECTION III.

The Grant County Sanitary Sewer District shall be managed by Bullock Pen Water District pursuant to the applicable provisions of KRS Chapter 74, applicable administrative regulations of the Commonwealth of Kentucky and applicable orders or ordinances of the Grant County Fiscal Court.

SECTION IV

The Grant County Sanitary Sewer District created hereby shall be a political subdivision of the County of Grant but same shall not be a special taxing district. The Grant County Sanitary Sewer District may make charges for service and land assessments for capital improvements.

SECTION V

The provisions of this ordinance are severable and if any provisions shall be held invalid or unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair the remaining provisions of this ordinance. This ordinance shall be in full force and effect from and after its approval, adoption and publication, and all ordinances or parts of ordinances in conflict herewith are hereby repealed and held for naught.

Approved on first reading and ordered published on the 16th day of September, 2002.

Approved on second reading on the 07th day of October, 2002.

Grant County Fiscal Court

By: 
Judge/Executive

ATTEST:


Clerk, Grant County Fiscal Court

RENDERED: July 12, 2002; 2:00 p.m.
NOT TO BE PUBLISHED



Commonwealth Of Kentucky

Court Of Appeals

NO. 2001-CA-001482-MR

OLDHAM COUNTY SANITATION DISTRICT

APPELLANT

v. APPEAL FROM FRANKLIN CIRCUIT COURT
HONORABLE ROGER L. CRITTENDEN, JUDGE
ACTION NO. 00-CI-00480

KENTUCKY PUBLIC SERVICE COMMISSION

APPELLEE

OPINION
REVERSING AND REMANDING

** ** * * * * *

BEFORE: BUCKINGHAM, KNOPF, AND SCHRODER, JUDGES.

SCHRODER, JUDGE: The Oldham County Fiscal Court (Fiscal Court) established an independent sanitation district by authority of KRS 67.715(2), to be governed by KRS Chapter 220, which authorizes the creation and regulation of special sanitation districts. The Public Service Commission (PSC) contends it has jurisdiction over the district because it was not created by KRS Chapter 220. The district counters that it is governed by said

statutes, and therefore exempt from PSC regulation. We opine that KRS 67.715(2) authorizes an alternative method of creating sanitation districts and the real issue is whether the sanitation district is governed by KRS Chapter 220. If governed by KRS Chapter 220, it is exempt from PSC regulation. We therefore reverse and remand.

On December 3, 1996, the Fiscal Court established the Oldham County Sanitation District (OCSD), whose territory includes all of Oldham County, except the cities of LaGrange and Crestwood. The ordinance creating the special district declared that the OCSD shall be governed by KRS Chapter 220.

KRS 220.020 gives the Secretary of the Natural Resources and Environmental Protection Cabinet the position of Commissioner of Sanitation to establish sanitation districts when the County Board of Health certifies the need for a sanitation district to the Commissioner. KRS 220.040 sets forth the prerequisites necessary for the Board of Health to certify a need. If no suit is filed, or one is filed and a final judgment entered in favor of a district, the sanitation district then becomes a political subdivision with perpetual existence.

In the case sub judice, the Fiscal Court took the initiative to create a sanitation district by authority of KRS 67.715(2) which allows fiscal courts to create special

districts.¹ The Fiscal Court's intention here was clearly to start up a sanitation district, and once created, subject it to the requirements and regulations of sanitation districts created under authority of KRS Chapter 220.²

One of the OCSD's first orders of business was to purchase a private sanitation district (Covered Bridge) and absorb it into the OCSD. Now private sanitation districts are considered utilities subject to the rules and regulations of the Public Service Commission (PSC) under KRS 278.010(3)(f). Under that statute, a utility is defined as:

any person except . . . a city, who owns, controls, operates, or manages any facility used or to be used for or in connection with:

(f) The collection, transmission, or treatment of sewage for the public, for compensation, if the facility is a subdivision collection, transmission, or treatment facility plant that is affixed to real property and is located in a county containing a city of the first class or is a sewage collection, transmission, or treatment facility that is affixed to real property, that is located in any other county, and that

¹KRS 65.160 allows two or more counties to form special districts for any purpose an individual county can perform.

²See Oldham County Ordinance No. 96-830-26, wherein Fiscal Court states: "The Oldham County Sanitation District shall be created and formed so that it shall have all powers and duties to reasonably, necessarily and effectively implement the provisions of and carry out the duties prescribed by KRS Chapter 220. The District shall be structured consistent with the provisions of KRS Chapter 220."

is not subject to regulation by a metropolitan sewer district or any sanitation district created pursuant to KRS Chapter 220;

. . .

The PSC approved the sale of Covered Bridge to the OCSD but went on to inform the OCSD that since it was not created pursuant to KRS Chapter 220, it would be subject to the PSC jurisdiction. The OCSD acknowledges it was not created by Chapter 220 of the Kentucky Revised Statutes but contends that after creation it was made subject to and transformed into a KRS Chapter 220 sanitation district. The circuit court assessed the issue as being whether the OCSD is a KRS Chapter 220 sanitation district which is outside the PSC's jurisdiction or a utility subject to the PSC's jurisdiction or regulatory oversight. The circuit court concluded that only sanitation districts created pursuant to KRS Chapter 220 are exempt from PSC regulation, but not those sanitation districts made subject to the regulations, etc. in KRS Chapter 220.

The OCSD has appealed to our Court contending that regardless of the way it was created, the OCSD is a sanitation district regulated and controlled by KRS Chapter 220. Therefore, it should be exempt from PSC regulation. KRS 67.715(2) does authorize the Fiscal Court to create any special district. The first question is whether KRS 67.715(2) creates an alternative

method to KRS 220.010 through KRS 220.110. This is an issue of law, not fact, so the standard of review is de novo. Aubrey v. Office of the Attorney General, Ky. App., 994 S.W.2d 516 (1998); Mill Street Church of Christ v. Hogan, Ky. App., 785 S.W.2d 263 (1990).

We begin our analysis with a review of KRS 278.010(3) which defines which utility companies are subject to PSC regulation. Currently, the definition of a utility excludes "a city who owns, controls, operates, or manages . . ." a sanitation district; sanitation districts regulated by a metropolitan sewer district, "or any sanitation district created pursuant to KRS Chapter 220." The Supreme Court in Boone County Water and Sewer District v. Public Service Commission, Ky., 949 S.W.2d 588 (1997), dealt with a sanitation district and an earlier version of KRS 278.010(3) which excluded city-owned sanitation districts as well as those "regulated by a metropolitan sewer district." Included in the earlier version were sanitation districts which treated sewage. The Court had a district before it that only collected, but did not treat sewage. The Court found two reasons for excluding the sanitation district from PSC jurisdiction: first, the collection was omitted from inclusion; and collection was included "by precise placement in another chapter of the Kentucky Revised Statutes." Id. at 591. A sanitation district

created under KRS Chapter 220, which authorizes and regulates special sanitation districts, was the only special sanitation district other than metropolitan sewer districts, sewer construction districts, and sanitation tax districts, created under Chapter 76, in effect at the time the Court decided the Boone County Water case in 1997. Also, the Boone County Water and Sewer District (Boone) was "a non-profit public utility which operates a water district and several small sewage treatment facilities." Id. at 589. "Boone also operates a sewage collection system pursuant to a contract with Sanitation District No. 1 of Campbell and Kenton Counties." Id. Obviously the combined water and sanitation district of Boone County was not a KRS Chapter 220 sanitation district, yet the Supreme Court was saying it was subject to KRS Chapter 220.

After the Boone County Water decision, the General Assembly amended KRS 278.010(3)(f) so that not only city sanitation districts and sanitation districts subject to regulation by a metropolitan sewer district were exempt from PSC regulation, but also exempted "any sanitation district created pursuant to KRS Chapter 220."³ This is close but not exactly what the Court said. The Court was saying special sanitation

³(SB 110, Chapter 118, Section 1, effective July 14, 2000.)

districts were governed by KRS Chapter 220, whereas the General Assembly said those "created" by said chapter. Those created include those regulated by said chapter but not all those regulated by were also created by said chapter. Therefore, the amendment is not as inclusive as the court decision, nor was the amendment an attempt to limit the scope of the Boone County Water case. Our interpretation of the amendment as an oversight in wording is more logical or consistent with the rest of the statute which speaks in terms of being regulated by a city or metropolitan sewer district, rather than being concerned with the method of creation.

For the foregoing reasons, the judgment of the Franklin Circuit Court is reversed and remanded.

ALL CONCUR.

BRIEF AND ORAL ARGUMENT FOR
APPELLANT:

Edward L. Schoenbaechler
Louisville, Kentucky

BRIEF FOR APPELLEE:

Deborah T. Eversole
Gerald E. Wuetcher
Frankfort, Kentucky

ORAL ARGUMENT FOR APPELLEE:

Gerald E. Wuetcher
Frankfort, Kentucky

Office of the Attorney General
Commonwealth of Kentucky

*1 OAG 94-46
June 27, 1994

Re: Whether Fiscal Court May Establish Sanitation District Which Does Not Have Taxing Authority. AGO Corr. No. 94-(0)-673.

Hon. Walter A. Sholar
Bullitt County Attorney
P. O. Box 6539
Shepherdsville, Kentucky 40165

Dear Mr. Sholar:

By letter of May 25, 1994, you asked, in substance, whether the fiscal court may create a KRS 220 sanitation district that does not have taxing authority.

In our view the answer is no. Discussion follows.

A KRS chapter 220 "sanitation district" may be created by the secretary of the Natural Resources and Environmental Protection Cabinet acting as "commissioner of sanitation districts" in accordance with [KRS 220.020](#).

[KRS 220.360](#) invests the board of directors of a sanitation district with certain authority to impose taxes in connection with such a district.

[KRS 220.035](#) enumerates certain specific powers a fiscal court may exercise in connection with a sanitation district. Those powers do not provide authority for a fiscal court to restrict the taxing authority invested in the board of directors of a sanitation district by [KRS 220.360](#).

It is well recognized that a county (and of course, a fiscal court), as a subordinate unit of government, can do that which it is statutorily empowered to do, and cannot do that which it is not authorized to do. The legislature has expressly listed the authority of a fiscal court in connection with a sanitation district ([KRS 220.035](#)).

As was pointed out in [Bloemer v. Turner, 281 Ky. 832, 137 S.W.2d 387, 390 \(1939\)](#):

Logic and experience developed the maxim *expressio unius est exclusio alterius*,-- 'The enumeration of particular things excludes the idea of something else not mentioned.' This is a primary rule of statutory construction. [Hughes v. Wallace, Ky., 118 S.W. 324; 25 R.C.L. 982.](#)

In keeping with such rule, we believe a fiscal court has no power to restrict the authority of a sanitation district board to impose taxes the board is expressly authorized to impose ([KRS 220.360](#)). As the powers of a fiscal court in connection with a sanitation district have been expressly listed in [KRS 220.035](#), and as such powers do not include the power to restrict the taxing authority of a sanitation district board, a fiscal court, in our view, does not have such authority. [Bloemer, above; KRS 220.035.](#)

Sincerely,

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1994 Ky. Op. Atty. Gen. 2-118, Ky. OAG 94-46, 1994 WL 327627 (Ky.A.G.)

(Cite as: 1994 WL 327627 (Ky.A.G.))

Chris Gorman

Attorney General

Gerard R. Gerhard

Assistant Attorney General

1994 Ky. Op. Atty. Gen. 2-118, Ky. OAG 94-46, 1994 WL 327627 (Ky.A.G.)

END OF DOCUMENT

*1 Office of the Attorney General
Commonwealth of Kentucky

OAG 83-391
September 26, 1983

Mr. Harold K. Botner
Madison County Judge Executive
Courthouse
Richmond, Kentucky 40475

Dear Judge Botner:

A section of Madison County east of Richmond, you have written, has a critical need for sanitary sewers. The residents of the area are definitely behind the formation of a sewer district.

Your problem was stated as follows:

"After reading OAG 83-292, it seemed that either a sanitary sewer district or sewer construction district might be formed by applying [KRS 67.715\(2\)](#). If so, would we continue under KRS 220 or KRS 76, or is there a more expedient method of handling our problem?"

[KRS 67.715\(2\)](#) reads:

"(2) The county judge/executive or county judges/executive of multi-county districts may, with approval of the fiscal court or fiscal courts, create, any special district or abolish or combine any special district, provided such district was created solely by one or more such fiscal courts".

[KRS 224A.010\(1\)](#) defines "sewage" as any of the waste products or excrements, or other discharges from the bodies of human beings or animals, which pollute the waters of the state.

Since [KRS 67.715\(2\)](#) is in broad and general terms without any elucidation, we can only surmise that the power of a county judge executive, with approval of the fiscal court, to create a special district must necessarily refer to special districts treated in existing state legislation.

[KRS 67.083\(3\) \(r\)](#) provides that a fiscal court may make provisions for water and sewage and garbage disposal service, including management of onsite sewage disposal systems. That provision relates, we believe, to sewage systems under the direct control of the fiscal court.

Richmond is a third class city. [KRS 81.010\(3\)](#). [KRS 76.010](#) to [76.210](#) relate to metropolitan sewer districts. [KRS 76.010](#) provides for a joint metropolitan sewer district in counties containing a city of the first and second classes. [Rash v. Louisville & Jefferson County Met. S. Dist.](#), 309 Ky. 442, 217 S.W.2d 232 (1949) 234.

Construction subdistricts, dealt with in [KRS 76.241](#) to [76.273](#), are created by MSD's. Sanitation tax districts, under [KRS 76.274](#) to [76.279](#), involve only Jefferson County. [KRS 76.295](#) to [76.420](#), involving sewer construction districts, involve a MSD.

Thus KRS Chapter 76 relates only to metropolitan sewer districts, which does not apply to Madison County.

(Cite as: 1983 WL 166157 (Ky.A.G.))

[KRS 74.407](#) provides that water districts are authorized to acquire, develop, maintain and operate sewage disposal systems within the confines of their districts, except that operating such systems in a municipal area having authority to provide sewer services must have the municipal consent. Elsewhere in that statute it is provided that "The water district commissioners shall have all the powers and authority, as regards sewer systems, that are conferred upon them for the purpose of furnishing a water supply under [KRS 74.010](#) to [74.390](#). Thus when a sewer district is created under [KRS 67.715\(2\)](#), the county judge executive order and order of fiscal court should be carefully worded to disclose the intended creation of a sewer district, as treated by [KRS 74.020](#) to [74.390](#) in the analogous manner expressed in [KRS 74.407](#), and to the extent that those statutes in that group can be practically applied to a sewer district operation. [KRS 74.080](#), relating to rates, can be applied to a sewer system, for example. See also [KRS 74.130](#), as a basis for land assessments for capital construction in the sewer system.

*2 While, under KRS Chapter 74, a sewer district created under [KRS 67.715\(2\)](#) would be a political subdivision of the county, it is not a special taxing district. It can only make charges for service and land assessments for capital improvements. Thus such a sewer district created under [KRS 67.715\(2\)](#), and applying the applicable language of KRS Chapter 74, is not subject to the indebtedness restrictions of § [§ 157](#) and [158, Kentucky Constitution](#). See OAG 80-333, published, Banks-Baldwin.

[KRS 220.030\(4\)](#), relating to sanitation districts, reads:

"Sanitation districts may be established for any of the following purposes:

* * *

"(4) To provide for the collection and disposal of sewage and other liquid wastes produced within the district; and incident to such purposes and to enable their accomplishment, to construct, with all appurtenances thereto, laterals, trunk sewers, intercepting sewers, siphons, pumping stations, treatment and disposal works, to maintain, operate and repair same, and do all other things necessary for the fulfillment of the purposes of [KRS 220.010](#) to [220.520](#)."

Where the county judge executive and fiscal court desire to create a sewer district pursuant to [KRS 67.715\(2\)](#), the orders of the county judge executive and fiscal court should be carefully worded to disclose the intended creation of a sewer district, as treated in [KRS 220.030](#) to [220.552](#) in the analogous manner expressed therein, and to the extent that those statutes can be practically applied to a sewer district operation.

Under [KRS 220.110](#) such a sewer district would be a political subdivision, having the authority, inter alia, to exercise the right of eminent domain, assess, tax, and contract for rentals. See [KRS 220.360](#), relating to the districts levying a tax for preliminary expenses, i.e., prior to the sale of bonds. See [KRS 220.510](#), relating to charges for sewer service. The sewer district under KRS Chapter 220 is not a separate taxing district under [§ 157, Kentucky Constitution](#), because of the limited extent of its taxing power. In [KRS 220.360](#) and [220.370](#), the taxing power is referred to as a "preliminary tax." A separate taxing district has the power to tax year after year, indefinitely during its existence. [Sanitation Dist. No. 1 v. City of Louisville, 308 Ky. 368, 213 S.W.2d 995 \(1948\)](#).

Sincerely,

Steven L. Beshear

Attorney General

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1983 Ky. Op. Atty. Gen. 2-486, Ky. OAG 83-391, 1983 WL 166157 (Ky.A.G.)

(Cite as: 1983 WL 166157 (Ky.A.G.))

By: Charles W. Runyan

Assistant Deputy Attorney General

1983 Ky. Op. Atty. Gen. 2-486, Ky. OAG 83-391, 1983 WL 166157 (Ky.A.G.)

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