

COMMONWEALTH OF KENTUCKY

BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN ELECTRONIC INVESTIGATION OF A)	
POSSIBLE ASSET ACQUISITION AND)	
TRANSFER OF CONTROL OF CUNNINGHAM)	CASE NO.
WATER DISTRICT TO THE CITY OF)	2021-00264
BARDWELL ON BEHALF OF BARDWELL)	
UTILITIES PURSUANT TO KRS 278.020(6))	
AND KRS 278.020(7))	

RESPONSE

COMES NOW the City of Bardwell, Carlisle County, Kentucky, on behalf of Bardwell City Utilities (“The City of Bardwell”), and files this Response. The City of Bardwell, through its Mayor and City Council Members, have discussed and reviewed the matter of the recent vacancies with the Cunningham Water District. As evidenced by the attached minutes from the Bardwell City Meeting on April 20, 2021, upon learning of the need to assist, as needed, the people of Cunningham—a nearby community in Carlisle County—the City promptly agreed to help “. . . until further discussions take place.” (April 20, 2021 Minutes are attached as “Exhibit A.”) See Exhibit A. A daily fee of \$80.00 was selected to help offset the costs of assisting. See Exhibit A. Six months later, at the October 12, 2021 meeting, The City of Bardwell discussed the matter further. The City Council then voted to continue assisting Cunningham until November 30, 2021, at which point The City of Bardwell’s help to Cunningham would have to terminate. (October 12, 2021 Minutes are attached as “Exhibit B.”) See Exhibit B.¹

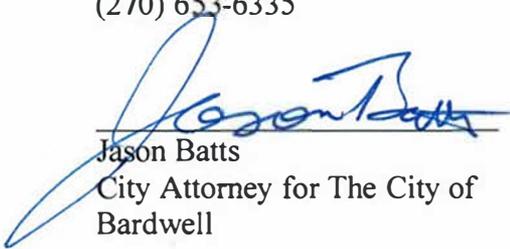
Any “acquirer” of a utility service must obtain permission from the commission or the attempt to acquire the service is “void and of no effect.” KRS 278.020(7). State law defines an

¹ The October 12, 2021 Minutes are preliminary as they cannot be presented for approval until the November City Council Meeting.

“acquirer” as one who *controls* a utility system. Id. “Control” is further defined as having “the power to direct or cause the direction of the management and policies of a utility . . . by effecting a change in the composition of the board of directors, by contract or otherwise.” Id. In this case, The City of Bardwell clearly does not control the water utility for Cunningham as The City of Bardwell has no power over the utility’s board of directors. Furthermore, state law says that even in cases where an entity “owns ten percent (10%) or more of the voting securities of the utility,” the presumption that such an entity has control over the others is merely that—a presumption—and fully rebuttable. Id. Given this high bar for control, The City of Bardwell has not become an acquirer of Cunningham’s water system. Instead, The City of Bardwell has merely operated as an independent contractor, using its own tools, personnel, and expertise, for a short time, as needed, to help the residents of Cunningham while the district of Cunningham determines its next step.

THEREFORE, The City of Bardwell respectfully submits this Response and provides notice to the parties involved that The City of Bardwell’s assistance to Cunningham will cease at 11:59 p.m. CST on November 30, 2021, and is therefore not an “acquirer” under state law.

Respectfully Submitted,
110 East Clay Street, Suite D
Clinton, KY 42031
(270) 653-6335



Jason Batts
City Attorney for The City of
Bardwell

Certificate of Service

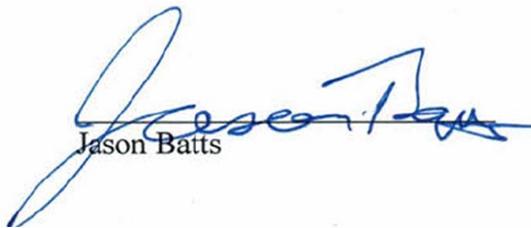
I certify the below parties were served on 27th day of October via regular U.S.

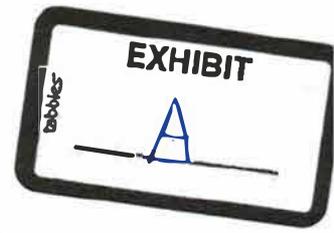
Mail, postage prepaid:

Dan Bowles
Chairman
Cunningham Water District
P. O. Box 644
Cunningham, KY 42035

Cunningham Water District
7506 US Highway 52
P. O. Box 644
Cunningham, KY 42035

Billy Viniard
Cunningham Water District
P. O. Box 644
Cunningham, KY 42035.


Jason Batts



BARDWELL CITY COUNCIL SPECIAL MEETING

April 20th. 2021 5:30 p.m.

BARDWELL CITY HALL

Present: Mayor Philip King Council Members Steve Perry, Diana Smith, Mahlon Thomas, Ronnie Canary and Terry Polivick

Also, Present: Mark Drysdale

The Mayor called the meeting to order at 5:35 p.m. by welcoming all the Council and reciting of the Pledge of Allegiance.

The Council discussed Cunningham Water District. They decided to provide an operator daily for the district at a rate of \$80.00 a day until further discussions take place.

A Motion was made by Steve Perry and seconded by Diana Smith to provide a daily operator to Cunningham Water District at the rate of \$80.00 a day. All Aye. Motion Carried.

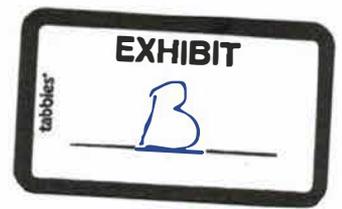
A Motion was made by Diana Smith and seconded by Terry Polivick to adjourn at 6:45 p. All Aye Motion Carried

Handwritten signature of Philip King in black ink, written over a horizontal line.

Philip King, Mayor

Handwritten signature of Adrian Cunningham in black ink, written over a horizontal line.

Adrian Cunningham, City Clerk



BARDWELL CITY COUNCIL MEETING

October 12th, 2021 5:00 p.m.

BARDWELL CITY HALL

Present: Mayor Philip King Council Members Steve Perry, Diana Smith, Mahlon Thomas and Terry Polivick

Also, Present: Adrian Burgess City Clerk, Mark Drysdale, Jason Batts and Brandon Marbry

The Mayor called the meeting to order at 5:04 p.m. by welcoming all the Council and reciting of the Pledge of Allegiance.

A Motion was made by Terry Polivick and seconded by Diana Smith to approve the previous minutes. All Aye Motion Carried.

A Motion was made by Mahlon Thomas and seconded by Steve Perry to approve the Monthly Bills. All Aye Motion Carried.

A Motion was made by Terry Polivick and seconded by Mahlon Thomas to approve the Financial Report. All Aye Motion Carried

A Motion was made by Steve Perry and seconded Mahlon Thomas that the City would stop providing an operator for the Cunningham Water District as of November 30th, 2021. All Aye Motion Carried.

A Motion was made by Steve Perry and seconded by Terry Polivick to authorize the City Attorney to provide a response to the Public Service Commission in regards to the Public Service Commissions request for documents pertaining to the Cunningham Water District. All Aye Motion Carried.

The Mayor then discussed the plans for the city to apply for USDA Grant money to purchase a new Police Vehicle for the new deputy, a Vac-Tron machine for the water system and a new Skid-steer for the Street Department.

A Motion was made by Mahlon Thomas and seconded by Diana Smith to go into closed session to discuss personnel. All Aye. Motion Carried.

A Motion was made by Diana Smith and seconded by Mahlon Thomas to come out of closed session. All Aye Motion Carried.

A Motion was made by Diana Smith and seconded by Terry Polivick to adjourn at 6:15. All Aye Motion Carried

Philip King, Mayor

Adrian Cunningham, City Clerk