

LEGAL ISSUES IN THE OPERATION AND MANAGEMENT OF WATER DISTRICTS

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ORDER OF PRESENTATION

- Nature of Water District
- Players
- Water District's Powers/Authority
- Reporting Requirements
- Money Issues
- Territory
- House Bill 1

What is a Water District?

- Political Subdivision
- Special District:

“Special district means any agency, authority, or political subdivision of the state which exercises less than statewide jurisdiction and which is organized for the purpose of performing governmental or other prescribed functions within limited boundaries. It includes all political subdivisions of the state except a city, a county, or a school district.”
KRS 65.005.

Significance of Being Political Subdivision

- Laws Applicable to State/Local Government Apply
 - Open Records Act
 - Claims Against Local Government Act
 - Whistleblower Act
 - Bidding Statute
- Treated Differently than Other Types of Water Utilities
- Officers of Water District are Public Officials

The Players

Who Has A Role Water District's Management and Operation?

- County Judge Executive
- Fiscal Court Members/Magistrates
- Commissioners
- Superintendent/Chief Executive Officer/GM
- Water District Attorney

Role of County Judge/Executive

- Power to Appoint
 - Appointment must be approved by Fiscal Court
- Power of Removal
 - Removal must be approved by Fiscal Court
 - Subject to Judicial Review
 - Grounds:
 - Inefficiency
 - Neglect of Duty
 - Malfeasance
 - Conflict of Interest
- Approves Expansion/Contraction of Water District
- No Fiscal Oversight
- No Authority Over Construction/Extensions/Rates
- Establishes Salary Level for Board of Commissioners

Role of County Fiscal Court

- May Create Water District
- Establishes Water District's Initial Boundaries
- Power to Approve or Disapprove Appointment
 - May not deny approval for unreasonable or arbitrary grounds
- Fiscal Court Must Approve Judge/Executive's Decision to Remove Commissioner
- No Fiscal Oversight
- No Authority Over Construction, Extensions, or Rates
- Establishes Salary Level for Board of Commissioners
- Ex Officio Member May Be Appointed

Board of Commissioners

- “A water district shall be administered by a board of commissioners which shall control and manage the affairs of the district.” KRS 74.020(1).
- “All corporate powers of the water district shall be exercised by, or under the authority of, its commission. The business and affairs of the water district shall be managed under the direction and oversight of its commission.” KRS 74.070.

Board of Commissioners

- Number
- Qualifications
 - Residence
 - Age
 - No Felony Conviction/Dueling
 - Not Holding An Incompatible Office
- Term

Board of Commissioners

- Who Appoints?
 - County Judge/Executive
 - Public Service Commission
- Who Removes?
 - County Judge/Executive
 - Public Service Commission
- Differences Between County Judge/Executive & PSC selection and removal processes

Board of Commissioners

- Positions
 - Chairman
 - Vice-Chairman
 - Secretary
 - Treasurer
 - Others as necessary
- Except for Chairman, Members may hold more than 1 position

Board of Commissioners

- Treasurer
 - Lawful custodian of WD's funds
 - Causes funds to be disbursed according to procedures adopted by Board
 - Entitled to additional compensation but not greater than \$200 annually
 - Must execute a separate bond than other commissioners

Board of Commissioners

- Bond Must Be Posted
 - W/I 30 days of appointment
 - Amount Specified by Board of Commissioners
 - Failure to Comply Vacates Office
- Oath
 - W/I 30 days of appointment
 - Failure to Comply Vacates Office

Board of Commissioners

- Salary
 - Established by County Judge/Executive & Fiscal Court (May be approved retroactively)
 - Maximum: \$3,600 per year
 - Exception: \$6,000 per year If 6 Hrs of Water Mgmt Training received during year
 - \$200 Additional Compensation for Treasurer
 - Fringe Benefits Not Included
 - Cannot Refuse to Accept Salary

Board of Commissioners

- Fringe Benefits
 - Liability Insurance: PERMITTED
 - Medical Insurance: PERMITTED
 - Free or Reduced Rate Water Service: **NOT PERMITTED**
 - Travel Expenses
 - Training Expenses

General Manager/Superintendent

- Board of Commissioners “may employ a person to serve as the chief executive officer of the water district.” KRS 74.040.
- CEO may not be a commissioner
- CEO is subject to the orders of Board
- CEO shall employ all necessary labor & assistance
- CEO shall report to Board all expenses incurred
- Board sets the CEO’s salary

Commissioner vs. General Manager: Governance

Commissioner

- Attends all board meetings
- Studies board packet prior to meetings
- Actively participate in meetings by asking questions, making motions, and voting
- Oversees overall operations of the water district

General Manager

- Attends all board meetings
- Prepares packet for each meeting, including agenda, fiscal report, monthly report, and correspondence
- Advises board as appropriate and provides information
- Manages day-to-day operations of the district

Commissioner vs. General Manager: Governance

Commissioner

- Adopts by-laws and policies for board operations
- Ensures development & adoption of written policies for personnel and water district operations
- Reviews policies and by-laws on a regular schedule
- Hires and/or asks a qualified attorney to review and approve policies

General Manager

- Proposes by-laws & policies to the board
- Develops personnel and water district operations policies & procedures at the direction of the board and implements policies adopted by the board
- Advises board when revisions or new policies are needed
- Under board's direction communicates with attorney

Commissioner vs. General Manager: Planning

Commissioner

- Adopts strategic plan
- Monitors and revises goals and objectives to meet changing conditions
- Reviews and revises plan annually

General Manager

- Drafts plan for consideration by board
- Creates strategy based on plan adopted by board
- Reports to board on progress toward implementing plan

Powers of Water District Board of Commissioners

- Operate Water System
- Make Contracts
- Prosecute and Defend Suits
- Hire CEO
- All Acts Necessary to Carry on the Work of Water District
- Create Fire Districts
- Establish Rates and Regulations for Water/Sewer Service (subject to PSC regulation)

Powers of Water District Board of Commissioners

- Acquire/Operate Sewer-Sewage Disposal Systems
- Operate Water-Sewer Systems Outside Its Territory
- Imposition of Fire Protection Measures
- Bill/Collect for Sewer Systems/Other Services - **MAYBE**
- Order Connect to Water/Sewer System - **NO**

Reporting Requirements

- Expiration of Commissioners' Terms – 60 days prior - County Judge/Executive
- Existence of Vacancy on Board – 30 days of the vacancy - PSC
- Appointment of Commissioner – 30 days of appointment – PSC
- Annual Notification of Changes – 60 days of close of fiscal year – County Clerk of Each County **PRA**
 - Name of District
 - Service Area
 - Statutory Authority Under Which It Was Created
 - Names, Addresses & Expiration Date of Terms of Bd Members and CEO

Reporting Requirements

- Annual Publication – 60 days of end of fiscal year^{PRA}
 - Names & Addresses of Bd Members and CEO
 - Summary Financial Statement (or location of financial records that may be examined by public)
 - Financial Statement must show:
 - total amount collected & received from each individual source
 - total amount disbursed during fiscal year to each individual payee

Reporting Requirements

- Annual Budget – 30 days before start of fiscal year – each county fiscal court **No expenditures**
- Annual Audit – each County Fiscal Court – 30 days of receipt of Audit **PRA**
 - Exception: WD Receiving or Spending > \$750,000
 - Submit Audit every 4 years, financial statement annually
 - PSC Annual Report May Be Submitted ILO financial statement
- PSC Annual Report – Annually NLT 3/31

Reporting Requirements

- Notification to State Local Debt Officer Prior to issuance of notes, bonds, or lease whose lease price exceeds \$200K.

Money Matters: RAISING REVENUE

- Water Districts Are NOT Taxing Districts – No Taxing Powers
- Assessments
 - Use to Fund System Improvements
 - Real Property Owner Assessed Amount Based Upon Cost of Improvement & the Level of Benefit Received From Improvement
 - Lengthy & Cumbersome Process
 - Seldom Used
 - Not Subject to PSC Jurisdiction

Money Matters: RAISING REVENUE

- Notes In Anticipation of Revenues (Non-Bond)
 - Limited to 75% of expected revenue in Fiscal Year
 - Prior Notification to State Local Debt Officer
- Revenue Bonds (KRS Chapter 58)
 - Proceeds Used to Acquire, Construct, Maintain, Add to, or Improve Public Project
 - May not exceed 40 year period
 - Prior Notification to State Local Debt Officer
 - May Issue Notes in Anticipation of Bond Issuance

Money Matters: RAISING REVENUE

- Rates for Water/Sewer Service
- Temporary Surcharge – KRS 74.395
 - Assess a temporary system-wide surcharge to finance system extensions/expansions
 - May impose & collect surcharge for 5 years before beginning construction
 - Surcharge proceeds placed into special reserve account
 - Financing Plan & Construction Schedule Subject to PSC review & modification

Money Matters: RAISING REVENUE

- Assistance From County
 - KRS 74.350 authorizes County to pay for any part of the costs of establishing or purchasing a water line or water system
 - KRS 67.083 authorizes fiscal courts to appropriate funds to cooperate with other governmental units for provision of utility service

Money Matters: RAISING REVENUE

- Non-Utility Related Revenue Activities
 - Examples:
 - Leasing Facilities
 - Billing & Collection Services
 - Common
 - Questionable Legal Basis

Money Matters: SPENDING MONEY

- Local Model Procurement Code – KRS 45A.345-.460 (Optional)
- KRS 424.260
 - Requires advisement for bids for any contract, lease or purchase of goods or services greater than \$20,000
 - Exemptions
 - Professional Services
 - Perishable Items

Money Matters: SPENDING MONEY

- KRS 424.260 (cont'd)
 - Cannot Sever or Divide Contract Into Portions to Evade Requirement
 - Consequence of Non-Compliance
 - Contracts Voidable
 - Attorneys Fees
 - Criminal and Civil Penalties
- Contributions/Donations
- Disposal of Surplus Property

Money Matters: SPENDING MONEY

- Prevailing Wage Laws
- Preferences in Procurement

TERRITORY ISSUES

- Water Districts have defined territory
- Obligation to Serve & Make Reasonable Extensions of Service Within Its Territory
- Territory initially defined in Ordinance Creating Water District

TERRITORY ISSUES

- Annexation of Territory
 - Within Same County: WD petitions County Judge
 - Extension into Another County: 2 freeholders In the County Must Petition the WD
 - Procedure:
 - Petition
 - Notice to Public
 - Hearing
 - If Judge finds extension reasonably necessary, issues order approving annexation of territory
 - Appeal may be made to Circuit Court
- Deannexation: Follows Same Procedure

TERRITORY ISSUES

- No requirement for Contiguous Territory
- Consent of City Into Territory
- No Role for PSC In Annexation/Deannexation Process
- WD May Contract to Service Areas Outside Territory

TERRITORY DISPUTES

- No Right to Exclusive Service
- Some Restrictions Upon Encroachment
 - KRS 96.150(1): City may not extend into WD's Area
- WD May Contract to Service Areas Outside Territory

HOUSE BILL 1

HB 1: KEY PROVISIONS

- Creates a new category of entity – “Special Purpose Governmental Entity”
- SPGE is an entity that:
 - receives public funds, including fees and charges for providing utility services
 - is governed separately from the city or county government where it operates
 - has its own budget, audit, and financial information separate from the city or county where it operates

HB 1: TIMELINE

- 03/21/2013 – HB 1 becomes effective
- Before 12/31/13 – SPGE shall register with DLG
- 01/01/14 – SPGES begin reporting rate/fee/tax changes to elected officials
- 03/01/14 – DLG to furnish forms & establish reporting registry & portal

HB 1: TIMELINE

- 07/01/14 – SPGEs to report required info to DLG through the Web portal (for FYs being on or after 07/01/14)
- 10/01/14 – DLG to make info available on website to public

HOUSE BILL 1:

GENERAL REPORTING REQUIREMENTS

- Name, Address, Term, and Appointing Authority for Each Bd Member
- SPGE's Fiscal Year
- KRS Chapter
- Yr Established
- Mailing Address
- Telephone Number
- Web Address

HOUSE BILL 1: GENERAL REPORTING REQUIREMENTS

- Boundaries
- Fees, Rates, & Charges
- Primary POC for DLG
- Applicable Code of Ethics
- All Regulatory Oversight Authorities
- Other Relevant Info

HOUSE BILL 1:

FINANCIAL REPORTING REQUIREMENTS

- Most Recently Adopted Budget
- A Comparison of Budget to Actual Revenues & Expenditures
- Completed Audit
- Other Financial Oversight Reports

HOUSE BILL 1: CODE OF ETHICS

- Effective 03/21/13 SPGE subject to code of ethics of the establishing entity in which SPGE's principal office (PO) is located
- If PO is located in more than 1 establishing entity, Bd selects applicable code
- Bd may adopt more stringent code Reports; must report to DLG w/i 21 days of adoption

HOUSE BILL 1: AUDITS

- SPGE with annual revenues of greater than \$500,000 must have annual independent audit
- SPGE with annual revenues \$100,000 - \$500,000 must have independent audit every 4 years
- SPGE with annual revenues of less than \$100,000 must attestation engagement every 4 years

HOUSE BILL 1: AUDITS

- Audit/Attestation Engagement must be filed with DLG
- Audit/Attestation is public record
- Additional audits may be required
- Results of Audit/Attestation Engagement to be available through the DLG Web Portal

HOUSE BILL 1: FEES

- DLG authorized to assess fees to pay for the cost of registry, education services, & compliance activities
- Fee Schedule (based on annual revenue)
 - Less than \$100,000 -- \$25
 - \$100,000 - \$500,000 -- \$250
 - Above \$500,000 -- \$500 must have audits every 4 years
- DLG may adjust fees once by Regulation

HOUSE BILL 1: BUDGET PROVISIONS

- SPGE's Governing Body must adopt budget
- No monies must may be expended from any source excepted as provided by adopted budget
- W/I 60 days of close of FY, SPGE shall publish location of adopted budget

HOUSE BILL 1: SANCTIONS

FAILURE TO TIMELY REPORT

- Administrative Dissolution
- Prohibited from collecting any fees, charges, taxes
- Finance Cabinet may withhold state funds
- DLG publishes notice of non-compliance

HOUSE BILL 1: SANCTIONS

REPORTING TO ELECTED OFFICIALS

- SPGE adopting new fee or increasing an existing fee after 12/31/13 must report the fee to governing body of the county in which largest number of citizens served
- Report is for informational purposes only
- Report must be in writing & 30 days in advance of fee's effective date
- Testimony must be presented to governing body at least 10 days before effective date

HOUSE BILL 1: SANCTIONS

REPORTING TO ELECTED OFFICIALS

Water District would be required to report to county elected officials for the following:

- General Rate Adjustment
- Purchased Water Adjustments
- Non-recurring charges
- Rule changes that have monetary effect

QUESTIONS?