



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION

730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

April 6, 1994

Mr. Gary Larimore
Executive Director
Kentucky Rural Water Assoc.
716 E. 10th Street
P. O. Box 1424
Bowling Green, Ky. 42101

Dear Mr. Larimore:

After our telephone conversation, I briefly researched Kentucky Constitution §169's applicability to water districts. During my research, I discovered an Attorney General's Opinion on the applicability of Section 169 to fire protection districts. Since these districts are similar to water districts, the opinion may also be applicable to water districts.

A copy of this opinion is attached.

Sincerely,

Gerald E. Wuetcher
Staff Attorney

mdk

Enclosure

such as Testape and Clinitest, it is equally clear from the language of KRS 139.472(1) that only drugs or medicines applied to the body externally or internally are eligible for exemption.

KRS 139.472(1) limits the exemption to medicinal substances or preparations that are used to treat, diagnose, mitigate or cure disease. Items such as hypodermic syringes, Testape and Clinitest are not medicinal substances or preparations within the statutory definition of "prescription medicine," and are therefore not eligible for exemption from sales and use tax pursuant to KRS 139.472(1).

OAG 85-65

To: Dennis M. Clare, Nold, Mosley, Clare, Hubbard & Townes, Louisville, Kentucky
By: Charles W. Runyan, Assistant Deputy Attorney General, April 1, 1985

FIRE PROTECTION DISTRICT—Establishment of

SYLLABUS: A fire protection district created and organized under KRS Chapter 75 is subject to the fiscal year provisions of § 169, Kentucky Constitution.

You have advised this office that your law firm represents numerous fire protection districts in Jefferson County, which districts were established under the provisions of KRS Chapter 75.

Your question concerns § 169 of the Kentucky Constitution. Section 169 reads:

"The fiscal year shall commence on the first day of July in each year, unless otherwise provided by law."

The specific question you would like this office to address and provide an official opinion on is as follows:

"Whether fire protection districts established pursuant to Chapter 75 of the Kentucky Revised Statutes year beginning on the 1st day of July in each year?"

Presently, you have stated that the fire protection districts in Jefferson County have varied fiscal years, and the strict observance of § 169 will result in overly burdensome paperwork and accounting expenses. Your personal opinion is that the district is an independent agency and, like a corporation, would not be subject to § 169.

The fiscal year of counties is governed by § 169, Constitution, except where provided otherwise by statute. *Ro v. First Nat. Bank*, 213 Ky. 453, 281 S.W. 517 (1926) 518. KR 68.060 specifically adopts § 169 by providing that the fiscal year of each county shall begin on July 1, and end on June 30 next following. School boards and cities are covered by § 169, except where otherwise provided by statute. *Board of Education v. Nelson*, 109 Ky. 203, 58 S.W. 700 (1900). See KR which specifically adopts the fiscal year provisions of § 169, Constitution, for all school districts.

We wrote in OAG 77-321, published, *Banks-Baldwin*, that a fire protection district organized under KRS be considered generally by our courts to be a political sub-

division. That is true since it has a governing body (board of trustees - see KRS 75.031), the right to tax (KRS 75.040), the power to make appropriations and engage in some self-governing (see KRS 75.050 and KRS 75.120). Judge Palmore, in *Kelley v. Dailey*, Ky., 366 S.W.2d 181 (1963) 183, wrote that "A fire protection district organized under KRS 75.010 is, of course, a type of municipal corporation." The Kentucky appellate court has been inclined to equate "political subdivision" with "municipality". See *Stephenson v. Louisville and Jefferson County Bd. of Health*, Ky., 389 S.W.2d 637 (1965) 638; *Rash v. Louisville and Jefferson County Met. Sewer District*, 309 Ky. 442, 217 S.W.2d 232 (1949) 236; *Smith v. Board of Education of Ludlow*, (C.C.A. - 6, 1940) 111 F.2d 573, 575; and *Dugas v. Beauregard*, Conn., 236 A.2d 87 (1967).

A fire protection district is a special and separate taxing district under §§ 157 and 158 of the Kentucky Constitution. It is also a local public agency under KRS 45A.345(9) of the Model Procurement Code.

At this point, since our appellate courts view a fire protection district as a political subdivision and a type of municipality, we conclude that the fiscal year provisions of § 169, Kentucky Constitution, apply to fire protection districts created and organized under KRS Chapter 75, unless otherwise provided by statutory law.

KRS 75.031(2) contains this tangential provision (enacted first in 1966 Acts, Ch. 97, Section 2) relating to fiscal year:

"On or before the beginning of the second fiscal or calendar year, depending on which basis the fire protection or volunteer fire department district is being operated, after June 16, 1966 all departments organized prior to June 16, 1966 shall increase their boards of trustees from three (3) to seven (7) members and elect the elective members in the manner set forth herein." (Emphasis added).

That fundamental language was not changed by subsequent amendments, down through the 1980 amendment.

At that point, a fire protection district had the choice of a fiscal year basis, commencing on July 1 in each year (since no fiscal year basis different from the basis given in § 169, Constitution, was stated in the statute) or the choice of using the calendar year.

However, in the 1974 Acts (Ch. 298, § 1), a new section was created, which was designated as KRS 75.255. Subsection (1) of that statute reads:

"(1) At the end of each fiscal year, the board of trustees of fire protection districts and volunteer fire department districts shall employ a certified public accountant to audit the books and records of the district. The certified public accountant selected shall have no personal interest
board of trustees or in the financial

affairs of the officers or employes of the district." (Emphasis added).

This later legislation (KRS 75.255) means that the General Assembly abandoned the statutory alternative of a calendar year for fire protection districts. There was left intact the prior provision of KRS 75.031(2) relating to a "fiscal year basis". In case of conflict, a later statute governs. See *Butcher v. Adams*, 310 Ky. 205, 220 S.W.2d 398 (1949) 400. Thus by this 1974 legislation (KRS 75.255) a fire protection district is permitted to use only a fiscal year basis. Since KRS Chapter 75 does not specify some beginning date other than July 1, of each year, the July 1 beginning date mentioned specifically in § 169 of the Kentucky Constitution governs such fire protection districts. In simple language, the exclusionary effect of the language in § 169, "unless otherwise provided by law," embraces not only a statute providing a calendar year basis, but also a statute specifying in particularity some beginning date of a fiscal year other than July 1. We have examined KRS Chapter 75 and have found no statute establishing a beginning date of fiscal year other than July 1. In fact, no beginning date is specified in KRS Chapter 75.

In addition, KRS 75.255(5) requires a fire protection district to comply with the provisions of KRS 424.220 (financial statements). That statute (KRS 424.220(1)) requires such public officer, "at the expiration of each fiscal year", to prepare an itemized, sworn statement of the funds collected, received, held or disbursed by him "during the fiscal year just closed," etc. (Emphasis added). Note the injection of the "fiscal year" concept.

CONCLUSION

We conclude that a fire protection district organized and created under KRS Chapter 75 is subject to the fiscal year provisions of § 169, Kentucky Constitution, i.e., with a beginning date of July 1 of each such fiscal year. There is simply no contrary or different statutory provision applicable to KRS Chapter 75 creations.

OAG 85-66

To: Jim "Pop" Malone, Jefferson County Clerk, Louisville, Kentucky
By: Charles W. Runyan, Assistant Deputy Attorney General, April 1, 1985

TAX ON LEGAL PROCESSES—Mortgages, etc.

- SYLLABUS:** (1) The state tax on legal processes, etc., applies to a deed of trust and a deed of assignment for benefit of creditors, where the instruments are lodged for record with the county clerk.
- (2) A deed of assignment of a real estate mortgage is covered by the legal process tax, KRS 142.010.

You raise two questions, concerning KRS 142.010, which relate to state taxes on legal processes and instruments.

Question No. 1:

"In KRS 64.012, First listing reads:
Recording deed of trust or assignment for
the benefit of creditors, provided the
entire record thereof does not exceed three