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Public Protection and
Regulation Cabinet**

**Thomas M. Dorman
Executive Director
Public Service Commission**

**COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION**
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**Gary W. Gillis
Vice Chairman**

**Robert E. Spurlin
Commissioner**

September 20, 2002

David T. Wilson II, Esq.
Skeeters, Bennett and Wilson, PLC
Post Office Box 610
Radcliff, Kentucky 40160

Re: Request for Opinion

Dear Mr. Wilson:

Commission Staff is in receipt of your letter of July 31, 2002 regarding the applicability of Hardin County Water District No. 1's ("Hardin District") Private Fire Line Charge to a proposed medical facility.

In your letter of July 31, 2002, you present the following facts: Hardin Memorial Hospital Foundation, Inc., is a non-profit corporation that Hardin County Fiscal Court organized to own and oversee the operation of Hardin County Memorial Hospital. The Foundation is constructing a new medical facility in Hardin County, Kentucky and has requested that Hardin District provide operational fire hydrants on the property where the facility is located. The Foundation contends that Hardin District may not assess a Private Fire Line Charge for this service because: (1) Hardin County Fiscal Court owns the medical facility and public funds will support the operation of the facility; (2) it will grant Hardin District an access easement to the fire hydrants and thereby effectively permit public access to the fire hydrants; and, (3) the fire hydrants in question are designed to protect a public building and not a private structure.

Your letter presents the following issue: Does Hardin District's current rate schedule require the assessment of a Private Fire Line Charge to the proposed medical facility?

Hardin District's rate schedule currently requires "[c]ustomers who require a dedicated fire protection main or fire hydrant for their address for fire protection purposes" to pay a monthly charge to permit the water utility to recover the cost related to fire protection service. This Private Fire Line Charge may be assessed for a line or hydrant that is "installed in a location that only provides fire protection to a private



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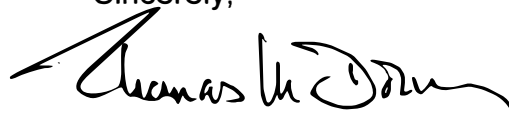
structure or building and is not available to the general public or to the local fire department for general public use.”

Commission Staff does not agree with the Foundation's position that, as the Foundation is publicly financed and is operated as an alter ego of Hardin County Fiscal Court, its proposed medical facility is not a private structure and is therefore not subject to the charge. The Private Fire Line Charge is designed to recover the cost of fire protection service whose coverage is limited to one structure from that structure's owner rather than from all ratepayers. Regardless of the nature of the Foundation's financing or status as a public entity, the proposed fire protection service benefits only the proposed medical facility, not the general public. It is therefore of a private nature and one whose costs should properly be borne by the entity receiving the benefits of such service.

The dedication of a public easement upon which the proposed fire hydrants is located is not determinative of the Foundation's liability for the Private Fire Line Charge. The rate does not expressly exempt water mains or hydrants that are located on public property. The critical factor is whether location of the water main or fire hydrant is in a location that would make fire protection service available to the general public. Commission Staff is of the opinion that, if there are no other structures or facilities in the general vicinity of the medical facility that can make use of the fire hydrants or benefit from their existence, then the fire hydrants may not be considered as being available to the general public. As your letter does not provide sufficient information to determine whether the Foundation's proposed easement would make the proposed fire hydrants available to the general public, Commission Staff is unable render an opinion on that issue.

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 PSC 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,

A handwritten signature in black ink, appearing to read "Thomas M. Dorman", with a stylized flourish at the end.

Thomas M. Dorman
Executive Director