

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

INVESTIGATION INTO TRANSACTIONS)
BETWEEN SOUTHERN MADISON WATER) CASE NO. 2006-00465
DISTRICT AND COMMISSIONER JERRY COMBS)
)

ORDER

Southern Madison Water District, a water district organized pursuant to KRS Chapter 74, owns and operates water distribution facilities that provide water service to approximately 4,053 customers in Madison County, Kentucky. It is a utility subject to Commission jurisdiction.¹

The Commission is authorized to investigate and examine the condition of any utility subject to its jurisdiction.²

The Commission is authorized to investigate any practice or act affecting or relating to the service of a utility and, upon finding that such action or practice is unjust, unreasonable, unsafe, improper, inadequate or insufficient, to determine the just, reasonable, safe, proper, adequate or sufficient practice or method to be observed.³

The Commission is authorized to remove a commissioner of a water district from his office for good cause, including incompetency, neglect of duty, gross immorality, or

¹ KRS 278.015.

² KRS 278.250.

³ KRS 278.260(1); KRS 278.280(1).

nonfeasance, misfeasance, or malfeasance in office, including, without limiting the generality of the foregoing, failure to comply with rules, regulations, and orders of the Commissioner.⁴

The Attorney General has previously opined that “commissioners of a water district organized pursuant to KRS Ch[apter] 74 are prohibited from entering into contracts with the district as a conflict of interest would exist which would be against public policy.”⁵

Commission Staff has reported the following to the Commission:⁶

1. Jerry Combs currently serves as a member and treasurer of Southern Madison Water District’s Board of Commissioners.⁷
2. Mr. Combs is currently paid an annual salary of \$4,800 for his services as commissioner.⁸
3. On September 5, 2006, during a routine Commission Staff inspection of Southern Madison Water District’s records and facilities, Southern Madison Water District’s general manager advised Commission Staff that the water district has contracted with Mr. Combs to serve as an inspector for a water improvement construction project for an amount not to exceed \$3,500. This compensation appears to be in addition to Mr. Combs’ annual salary of \$4,800.

⁴ KRS 74.455.

⁵ Ky. OAG 66-788.

⁶ Commission Staff’s report to the Commission is set forth in the affidavit found at Appendix A to this Order.

⁷ Annual Report of Southern Madison Water District to the Public Service Commission for the Calendar Year ending December 31, 2005 at 6.

⁸ Id.

Based upon the foregoing and being otherwise sufficiently advised, the Commission finds that an investigation of the transaction between Mr. Combs and Southern Madison Water District should be initiated to determine if any violations of KRS Chapter 74 have occurred, if the transaction is consistent with the duties that Kentucky law imposes upon water district commissioners, and if the transaction has adversely affected the quality of service that Southern Madison Water District provides.

IT IS THEREFORE ORDERED that:

1. An investigation is initiated into Southern Madison Water District's contract with Mr. Combs for inspection services.
2. Southern Madison Water District shall, no later than December 7, 2006, file with the Commission the original and 6 copies of the information listed in Appendix B. Each copy of the requested information shall be placed in a bound volume with each item tabbed. When a number of sheets are required for an item, each sheet should be appropriately indexed, for example, Item 1(a), Sheet 2 of 6. Southern Madison Water District's response shall conform to the requirements set forth in Paragraph 3 of this Order.
 3. a. All interrogatories and requests for production of documents shall be appropriately indexed. All responses shall include the name of the witness who will be responsible for responding to the questions related to the information provided, with copies to all parties of record and 6 copies to the Commission.
 - b. Each response shall be under oath or accompanied by a signed certification of the preparer or person supervising the preparation of the response on


behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. A party shall make timely amendment to any prior response if it obtains information upon the basis of which it knows that the response was incorrect when made, or though correct when made is now incorrect in any material respect

d. For any request to which a party refuses to furnish the requested information, that party shall provide a written explanation of the specific grounds for its failure to furnish.

Done at Frankfort, Kentucky, this 20th day of November, 2006.

By the Commission

ATTEST.

Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2006-00465 DATED November 20, 2006.

AFFIDAVIT

Jim Adcock, being duly sworn, states:

1. I am currently an employee of the Public Service Commission of Kentucky. I have been employed with the Public Service Commission since July 16, 2002.

2. I am employed as a water utility inspector in the Commission's Division of Engineering. As one of my duties as a water utility inspector, I periodically inspect the records and facilities of water utilities that are subject to the Commission's jurisdiction to ensure the water utilities' compliance with the provisions of KRS Chapter 278, Commission regulations, and other applicable statutes and regulations.

3. On October 3, 2006, I inspected the records and facilities of Southern Madison Water District. My inspection was a follow-up inspection to an inspection that I conducted earlier in 2006. Mr. Tommy Bussell, Southern Madison Water District's manger, accompanied me on this inspection. During the course of my inspection, Mr. Bussell advised me that Southern Madison Water District had contracted with Mr. Jerry Combs to serve as an inspector on the Silver Creek-Bobtown Water System Improvement Project (Contract 1). Southern Madison Water District was to pay Mr. Combs on an hourly basis but his total compensation for his inspection services was not to exceed \$3,500. Mr. Bussell acknowledged that Mr. Combs currently serves as treasurer of Southern Madison Water District's Board of Commissioners. He further stated that Southern Madison Water District's Board of Commissioners had approved the contract and that its legal counsel had reviewed the arrangement and found it proper. At my request, Mr. Bussell subsequently provided me with a copy of the contract (Exhibit A) and legal counsel's opinion (Exhibit B).


AFFIANT STATES NOTHING FURTHER.

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF FRANKLIN)



Jim Adcock

SUBSCRIBED and sworn to before me by Jim Adcock this 7th day of November, 2006.



NOTARY PUBLIC
Kentucky-At-Large

My Commission expires 01/27/2008

Southern Madison Water District

207 NORTH DOGWOOD DRIVE
P.O. BOX 220
BEREA, KENTUCKY 40403
859-986-9031

EXHIBIT A

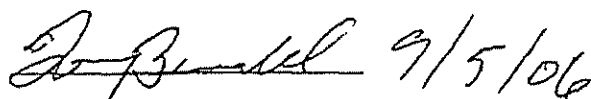
Contract for water line and pump station inspection

Silver Creek-Bobtown Water System Improvements (contract 1)

The SMWD Board of Commissioners has decided to have Tommy Bussell, Manager of SMWD, hire Jerry Combs as the inspector for contract # 1 water line and pump station project.

This contract is for 21 working days to begin after H & M Contractors and any sub-contractors have commenced work. The amount is not to exceed \$3,500.00.


Jerry Combs 9/5/06
Jerry Combs


Tommy Bussell 9/5/06
Tommy Bussell

OLIVER & OLIVER

LAW OFFICES
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EXHIBIT B

Roger M. Oliver
rmo@oliverlawoffices.com

August 21, 2006

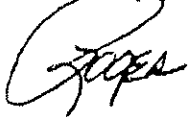
Mr. Tommy Bussell, Superintendent
Southern Madison Water District
207 North Dogwood Drive
Berea, KY 40403

In RE: Jerry Combs as Project Inspector

Dear Tommy:

I have reviewed the Madison County Ethics as well as Kentucky Revised Statutes and based upon the fact that Jerry did not participate in the voting to hire him to do the inspection on the water line project, plus the fact that it is the opinion of the commission that he will do a better job and that the Water District will save a substantial amount of money, I believe that it would be proper for the District to hire him to handle that inspection work.

Cordially yours,



Roger M. Oliver

RMO:lpr

cc: Mr. Jerry Combs
Mr. Paul Reynolds
Mr. Larry Todd

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2006-00465 DATED November 20, 2006.

1. Provide the resolutions in which the Madison County Fiscal Court approved the appointment of Jerry Combs to Southern Madison Water District's Board of Commissioners.

2. Provide the Madison County Fiscal Court resolutions that established the current salary level for the members of Southern Madison Water District.

3. State for each year since 2004 the level of compensation that Southern Madison Water District has paid to Mr. Combs.

4. Provide for each year in which Southern Madison Water District paid to Jerry Combs an annual salary that exceeded \$3,600 the title, instructor and date of the certified water district commissioner management training that Mr. Combs attended.

5. State whether Southern Madison Water District entered a contract to Mr. Combs to serve as an inspector on the Silver Creek-Bobtown Water System Improvement Project (Contract 1).

6. If Southern Madison Water District entered a contract to Mr. Combs to serve as an inspector on the Silver Creek-Bobtown Water System Improvement Project (Contract 1),

a. State the amount of compensation that the water district has paid to Mr. Combs under this contract.

b. State the period during which Mr. Combs performed the services required under the contract.

7. Provide a copy of the contract between Southern Madison Water District and Mr. Combs to serve as an inspector on the Silver Creek-Bobtown Water System Improvement Project (Contract 1).

8. Provide a copy of the minutes of each meeting of the Southern Madison Water District's Board of Commissioners in which the board discussed contracting with Mr. Combs to serve as an inspector on the Silver Creek-Bobtown Water System Improvement Project (Contract 1).

9. Provide all memoranda, correspondence, electronic mail messages, and notes or other documents in which the employment of Mr. Combs as an inspector is discussed.

10 Describe Mr. Combs' qualifications to serve as an inspector on the Silver Creek-Bobtown Water System Improvement Project (Contract 1).

11. a. List and describe each construction project that Southern Madison Water District has engaged since January 1, 2001.

b. For each project listed, state the fee charged or cost incurred for inspection services.

12. Refer to Letter of Roger M. Oliver to Tommy Bussell of August 21, 2006. Explain why Southern Madison Water District believes that retaining Mr. Combs' services would "save a substantial amount of money."

13. Refer to Letter of Roger M. Oliver to Tommy Bussell of August 21, 2006. Explain why Southern Madison Water District believes that Mr. Combs would "do a better job."

14. Provide Mr. Combs' curriculum vitae.

15. Provide a copy of the Madison County Code of Ethics.
16. Provide a copy of the resolution of the Southern Madison Water District's Board of Commissioners in which the Board adopted the Madison County Code of Ethics.
17. State whether Southern Madison Water District agrees with Attorney General Opinion 66-788 in which the Attorney General opined that "commissioners of a water district organized pursuant to KRS Ch[apter] 74 are prohibited from entering into contracts with the district as a conflict of interest would exist which would be against public policy." If no, explain why.
18. List the other persons or entities available to serve as inspector for the Silver Creek-Bobtown Water System Improvement Project (Contract 1) and state the cost of obtaining those services.
19. Describe the circumstances that led to Southern Madison Water District selecting Mr. Combs as an inspector for the the Silver Creek-Bobtown Water System Improvement Project (Contract 1).