

From: Jim Purcell jimpurcell48@gmail.com
Subject: Grant County Sewer District
Date: May 16, 2022 at 11:05 AM
To: tnienaber@fuse.net



Tom: I had a meeting with Judge Dills and Stephen Bates on May 5th concerning the sewer district and its need for expansion. Chuck informed me the story being told is that I am trying to take over the sewer district. Just for the record, I am not trying to take over the sewer district but I am in favor of the district being funded sufficiently to process sewage efficiently. To this end, I told Chuck there may be an advantage to transferring the sewer district to the city from the standpoint of minimizing or eliminating PSC involvement in the rate process as that may eliminate a bottleneck to needed expansion. He apparently wants the county to keep the district for whatever political purpose there may be, but said he was of the opinion you could cause PSC to relinquish oversight of the district, and would give us an answer to this PSC waiver within a week. Needless to say, it has been more than a week since the 5th and the answer I have gotten so far is he is waiting to hear. I don't know if a public airing of this would be in anyone's interest, but maybe a meeting, by conference call, zoom, or in person with you, me and Judge Dills would be fruitful. I don't mind other people attending, but it might be easier for people to speak freely without a need to posture if fewer are in attendance. Would you be willing to participate in such a meeting unless, of course, you have already convinced PSC to waive any further oversight and permit the rate process to take a more streamlined course to build sufficient capacity to permit growth in Crittenden? Thanks, Jim

Sent from [Mail](#) for Windows



Virus-free. www.avast.com

RE: Grant County Sanitary Sewer District

From : Jim Purcell <jimpurcell48@gmail.com>

Tue, May 17, 2022 03:52 PM

Subject : RE: Grant County Sanitary Sewer District**To :** rswandd@fuse.netExternal images are not displayed. [Display images below](#)

I understand there would have to be PSC approval to include a case filing to change anything, waiver of PSC oversight, transfer of supervision, etc., but the question I was seeking an answer to was will PSC waive oversight if there is no other change or, if there is a change such as supervision by the city, would that result in the district then being able to amend rates without the necessity of a protracted process? I would like to see the district have greater flexibility in the area of funding to insure the ability to meet any realistic future needs of the city, whether that be through the county, city, or a combination of the two entities through joint action if that would produce the best result. I don't know the gentleman you mentioned in your letter, but I also know someone who knows someone in the office of general counsel. When I spoke with that individual, and explained the scenario then asked about the possibility that oversight would be waived given the situation as it now exists, the answer was "There would have to be a case filing and then a hearing, and I cannot speak for the commission, but that won't happen." I hope this individual is incorrect but would like to not allow this situation to continue into the indefinite future. Thanks for your help, Tom.

Sent from [Mail](#) for Windows**From:** rswandd@fuse.net**Sent:** Tuesday, May 17, 2022 10:58 AM**To:** jimpurcell48**Cc:** [cdills](#); [sbates](#); [givin](#)**Subject:** Grant County Sanitary Sewer District

--

*SKEES WILSON & NIENABER PLLC
7699 Ewing Blvd., PO Box 756
Florence, KY 41022-0756
Phone: 859.371.7407
Email: rswandd@fuse.net*

SKEES, WILSON & NIENABER, PLLC

ATTORNEYS AND COUNSELORS AT LAW

HUGH O. SKEES
DALE T. WILSON
THOMAS R. NIENABER

7699 Ewing Boulevard
P.O. BOX 756
FLORENCE, KENTUCKY 41022-0756

TELEPHONE: 859.371.7407
FAX: 859.371.9872
EMAIL: rswandd@fuse.net

December 15, 2021

Grant County Sanitary Sewer District
1 Farrell Drive
PO Box 460
Crittenden, KY 41030

VIA EMAIL

Attention: Chairman Charles Givin
Mr. Danny Northcutt
Mr. Leo Saylor
Mr. Rodger Bingham
Mr. Robert H. Worthington, Jr.
Mr. Brian Simpson
Mr. Paul Harp

In re: Board Composition
Legal Opinion

Greetings:

An issue has recently been raised regarding the composition of Commissioner Membership and appointment to the Grant County Sanitary Sewer District Board of Commissioners ("Board"). Specifically, the District was asked whether or not a seat and/or seats on the District's Board can be specifically dedicated for residents of the City of Crittenden ("Crittenden"), and whether or not Crittenden could retain exclusive authority to appoint those Commissioners for those dedicated seat(s)? In order to address that question, a brief background of the District is in order.

The District was created on October 7, 2002, by the Grant County Fiscal Court through Ordinance No. 26-2002-453 ("Ordinance"). A copy of that Ordinance is attached. Subsequent thereto and by Agreement dated April 22, 2004, Crittenden transferred its then current sanitary sewer operation and system to the District. Pursuant to that Agreement, the District became the exclusive owner and operator of Crittenden's entire sanitary sewer system. Since that Agreement, the District has been the exclusive owner and operator of the sanitary sewer system previously held by Crittenden. Being a County created system, the District is subject to oversight by the Public Service Commission.

The Grant County Fiscal Court created the District pursuant to KRS 67.715(2); KRS 67.083(3)(r); and KRS 74.407. Those relevant statutory provisions provide for the following:

"KRS 67.715(2): The county judge/executive or county judges/executive of multicounty districts may, with approval of the

fiscal court or fiscal courts, create any special district or abolish or combine any special district, provided the district was created solely by the county judge/executive or county judges/executive or solely by one or more such fiscal courts.”

“**KRS 67.083(3)(r)**: This § lists among other powers of a Fiscal Court, authority to establish departments and agencies for the provision of water and sewage and garbage disposal service but not gas or electricity; including management of onsite sewage disposal systems.”

“**KRS 74.407(1)(a)**: In addition to the other authority which water districts presently have under this chapter, water districts are hereby authorized to acquire, develop, maintain, and operate sewage disposal systems within the confines of their respective districts or as authorized in paragraph (b) of this subsection, except that such sewer systems shall not include territory within the boundaries of existing municipal corporations having the authority to provide such sewer services without the consent of such municipal corporations.”

Given the fact that the District was organized and created pursuant to KRS 67.083(3)(r); KRS 715 (2); and KRS 74.407, it is my opinion that the District and the composition of its Board of Commissioners is likewise subject to the statutory provisions contained in Kentucky Revised Statutes, Chapter 74. KRS 74.020 specifically provides for the composition of a KRS Chapter 74 Board of Commissioners and for appointment of the Commissioners constituting such Board. KRS 74.020(1)(a) provides in part as follows:

“**KRS 74.020(1)(a)**: If a district lies wholly within a single county, or operates as a single-county district, as provided in paragraph (c) of this subsection, the board of commissioners shall be composed of either three (3) or five (5) members as the county judge/executive shall determine. Members of the board shall be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established, who shall be appointed by the county judge/executive with the approval of the fiscal court. Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the court;”

The District is a governmental entity operating within a single county, therefore, the appointment and composition of its Board of Commissioners is subject to the specific requirements set forth therein. The statute provides that the District’s Board of Commissioners shall be “composed of either three (3) or five (5) members as the County Judge/Executive shall determine.” Accordingly, any Commissioner serving on the District’s Board of Commissioners must be appointed by the Grant County Judge/Executive. The statute further provides that in order to serve as a Commissioner, any Member of the Board of Commissioners shall be residents of the “District”

in which the District was originally established. Given the original organization of the District and the geographic area currently served by the District, Commissioners need only be a resident of Grant County.

With the foregoing said, it is my opinion that any Commissioner serving on the District's Board of Commissioners must be appointed by the Grant County Judge/Executive and they must be a resident of Grant County. Given the specific statutory language of KRS 74.020, it is also my opinion that Crittenden would not be permitted to appoint a Commissioner to the District's Board of Commissioners. Parenthetically, it is also my opinion that the District could not adopt a policy that requires Commissioners to be residents of the geographical boundaries of Crittenden.

Under Kentucky law, when legal issues arise such as this issue, interested parties are permitted to address the Kentucky Attorney General's Office in order to obtain a formal Opinion from the Kentucky Attorney General. These Opinions issued by the Kentucky Attorney General's Office do not carry the weight of a formally adopted statute or legal opinion from an Appellate Court, however, these Opinions do carry weight if legal action is ever taken in the future. Taking into consideration the applicable statutes which relate to the issue at hand, it is my opinion that a Kentucky Attorney General's Opinion is not warranted. However, if you feel that such an Opinion would be in the District's best interest, I can prepare a request for such an Opinion. My experience in the past regarding Kentucky Attorney General Opinions is that they take a great deal of time to obtain.

Should you have any questions regarding this Opinion, please feel free to call.

Very truly yours,

/s/ Thomas R. Nienaber
THOMAS R. NIENABER

TRN/krp

**AN ORDINANCE CREATING
THE GRANT COUNTY SANITARY SEWER DISTRICT**

BE IT ORDAINED BY THE FISCAL COURT OF GRANT COUNTY,

SECTION I:

WHEREAS, the General Assembly of the Commonwealth of Kentucky has enacted KRS 67.715 (2) which permits the County Judge/Executive, with the approval of the Fiscal Court, to create any special district; and

WHEREAS, the fiscal court of Grant County desires to protect and safeguard the property, health, safety, and welfare of the citizens and the environment of Grant County; and

WHEREAS, KRS 67.083 (3) (r) provides that a fiscal court may make provision for water and sewage and garbage disposal service, including management of onsite sewage disposal systems; and

WHEREAS, there presently exists within Grant County a public water district known as Bullock Pen Water District, same having been established and currently operated pursuant to KRS Chapter 74; and

WHEREAS, KRS 74.407 provides that a water district is authorized to acquire, develop, maintain and operate sewage disposal systems within the confines of their districts except operation of same within a municipal area having authority to provide sewer services must be with municipal consent; and

WHEREAS, KRS 74.407 provides that water district commissioners shall have all of the powers and authority as regards sewer systems that are conferred upon them for the purpose of furnishing a water supply under KRS 74.010 to 74.415; and

WHEREAS, the fiscal court of Grant County is of the opinion that the Grant County Sanitary Sewer District should be operated by and in conjunction with Bullock Pen Water District;

NOW, THEREFORE, the fiscal court of Grant County enacts this ordinance which shall be known and may be cited as the "Grant County Sanitary Sewer District Ordinance".

SECTION II:

There is hereby created the Grant County Sanitary Sewer District pursuant to KRS 67.715 (2), 67.083 (3) (r) and the applicable provisions of KRS Chapter 74, which shall serve in the interest of public safety, health and welfare within unincorporated areas of the territorial boundaries of Grant County;

The Grant County Sanitary Sewer District shall develop, implement, and maintain local sanitary sewer management for Grant County in accordance with the provisions of KRS Chapter 74, applicable administrative regulations promulgated by the Commonwealth of Kentucky, and the resolutions, orders or ordinances of the fiscal court of Grant County.

The Grant County Sanitary Sewer District shall be an organizational unit of county government attached to the Office of County Judge/Executive and shall have primary jurisdiction, responsibility, and authority for all matters pertaining to the management and operation of a sanitary sewer district within Grant County.

SECTION III.

The Grant County Sanitary Sewer District shall be managed by Bullock Pen Water District pursuant to the applicable provisions of KRS Chapter 74, applicable administrative regulations of the Commonwealth of Kentucky and applicable orders or ordinances of the Grant County Fiscal Court.

SECTION IV

The Grant County Sanitary Sewer District created hereby shall be a political subdivision of the County of Grant but same shall not be a special taxing district. The Grant County Sanitary Sewer District may make charges for service and land assessments for capital improvements.

SECTION V

The provisions of this ordinance are severable and if any provisions shall be held invalid or unconstitutional or inapplicable to any person or circumstance, such invalidity, unconstitutionality, or inapplicability shall not affect or impair the remaining provisions of this ordinance. This ordinance shall be in full force and effect from and after its approval, adoption and publication, and all ordinances or parts of ordinances in conflict herewith are hereby repealed and held for naught.

Approved on first reading and ordered published on the 16th day of
September, 2002.

Approved on second reading on the 07th day of October, 2002.

Grant County Fiscal Court

By: 
Judge/Executive

ATTEST:


Clerk, Grant County Fiscal Court