

MINUTES

WATER PROVIDER LEGISLATIVE TASK FORCE

APRIL 11, 2018

The Water Provider Legislative Task Force met Wednesday, April 11, 2018 at 10:00 a.m. in Room 151, State Capitol Building, Little Rock, Arkansas.

Legislative Task Force members present: Senators Alan Clark, Co-Chair, and Ronald Caldwell. Representatives Tim Lemons, Co-Chair, Justin Boyd, and Fredrick Love.

Non-Legislative Task Force members present: Mark Bennett, Jack Critcher, County Judge Rick Davis, Daniel Dawson, Jennifer Enos, Tom Fox, Barry Haas, Jean Noble, designee for Alexandra Johnson, Dale Kimbrow, and Dennis Sternberg.

Other members present: Representatives Fred Allen, Bruce Cozart, Charlotte Douglas, David Fielding, Kenneth Ferguson, Mickey Gates, Jimmy Gazaway, Austin McCollum, Aaron Pilkington, and Nelda Speaks.

Call to Order

Senator Clark called the meeting to order.

Opening Remarks by Co-Chairs

Senator Clark thanked the Task Force members for being willing to attend an all-day meeting. Representative Lemons recognized and also thanked legislators in attendance.

Consideration of Motion for Approval of Minutes – February 7, 2018 [Exhibit C]

A motion to approve the minutes of the February 7, 2018 Task Force meeting was made by County Judge Rick Davis and seconded by Fredrick Love. The motion carried.

Review of the History and Background of Water and Sewer Issues in Garland County and the City of Hot Springs [Exhibit D, D1, D2, D3, D4]

Bob Mathis, former state representative and former Mayor of Hot Springs, was sworn in under oath by Senator Clark. Mr. Mathis suggested the Task Force formulate options that might help make water and sewer service available in the industrial district and properties in Garland County where development of commercial businesses would help create jobs. He believes the conflict between the city and the county should be resolved to encourage economic growth.

Ray Owen, Attorney, Owen, Farnell and Garner, was sworn in under oath by Senator Clark. Mr. Owen referenced a "History of the Regional Water and Sewer System Serving the City of Hot Springs and Its Environs in Garland County" (Handout 1). He gave an overview of their local water improvement districts and said he has served as assessor to over thirty improvement districts while working with engineering firms in Garland County. He explained that the property owners in the improvement districts have paid property assessments for many years towards their water and sewer infrastructure. They are now being denied connection to the city's water system.

Don Beavers, retired engineer, was sworn in under oath by Senator Clark. Mr. Beavers gave highlights of the City of Hot Springs water and wastewater systems dating back to the 1950s, including an overview of a specific improvement district. In the 1950s, the Arkansas Department of Health (ADH) restricted construction in the City of Hot Springs. For a number of years, the city's position was to continue to allow improvement districts to be formed. When an improvement district completed installing infrastructure, the city would then accept ownership and manage the district. In the 1970s, the Environmental Protection Agency (EPA) placed a ban on constructing any buildings within the Hot Springs city limits. During this time period, the city proposed building nineteen wastewater facilities under individual improvement districts. The city's position was to allow the districts to be formed, then obtain funding, and build infrastructure.

In the 1980s, the Highway 70 West Improvement District, consisting of 3,000 property owners, was formed. Plans were submitted to the city for connection to water and sewer service. The city rejected the district based on the position that there was a water shortage. The Highway 70 West Improvement District initiated plans to build its own treatment plant. Their plans were submitted to the ADH for approval. The City of Hot Springs appealed the District's submission to the ADH arguing the area was located within their protected service area. The Highway 70 West Improvement District spent in excess of \$400,000 purchasing the property to build the treatment plant because the city refused to provide service. Ultimately, the District was forced to sell the property.

Bill Malone, engineer, was sworn in under oath by Senator Clark. Mr. Malone gave an overview of the North Garland County Regional Water District. The district encompasses a large rural area. The City of Hot Springs refused to supply water to the District, which led the commissioners and Mr. Malone to seek assistance from former Senator Dale Bumpers. Senator Bumpers assisted the District in talks with the U.S. Army Corps of Engineers and ultimately succeeded in obtaining water for the District from Lake Ouachita.

Senator Clark described maps, D-2 and D-3 provided to the Task Force members:

- D-2- is a map depicting the city of Hot Springs in bright red, Garland County in green, and the remainder of Garland County in red, which is outside of city limits and shows a total of 863 miles of water lines. 504 miles of the lines are outside of the city limits and 359 miles of the lines are inside the city limits
- D-3- is the city of Hot Springs water system shown in blue and north Garland County is shown in yellow

Senator Clark noted that each of the areas shown on the maps are assigned to water providers by the Arkansas Natural Resources Commission (ANRC). Water providers are obligated to submit a ten-year service plan to the ANRC outlining their proposed plans to provide service to the assigned areas. Senator Clark referenced (Handout 5), information from a Hot Springs Board Meeting.

Under the title of proposed actions, the meeting notes in part:

- Refrain from providing water extensions to retail businesses in the planning area with only a few exceptions
- As exists in current policy, the Hot Springs Board of Directors can on a case-by-case basis approve exceptions if the approval is in the best interest of both the city and the applicant

On the subject of retail businesses, the Board meeting notes:

- New retail business development outside the city seriously threatens the financial viability of Hot Springs over the long term
- Therefore, the expansion of water extensions to retail businesses is untenable

Following a lunch recess, Senator Clark provided a brief synopsis of the testimony presented during the morning hours. He explained that the history of water and sewer issues in Hot Springs, described by Ray Owen and Don Beavers, dates back to the 1950s when the then State Department of Pollution Control banned any new construction in the city. The ban was due to a lack of available water and sewer service. At that time, the city and county worked together to form water improvement districts to provide the needed services.

Joe Gibson, owner of GTS Heating and Air, was sworn in under oath by Senator Clark. Mr. Gibson described the situation he encountered when he attempted to obtain water from the city for three acres of property he purchased in the Mid-America Industrial Park. He planned to build a warehouse to expand his business. He was aware that a 12-inch water main ran in front of the property, plus an existing water meter, led him to believe he could access water. Mr. Gibson was told he would not be allowed to connect to the city's water system.

Mr. Perry Young, attorney at law, was sworn in under oath by Senator Clark. Mr. Young referenced Exhibit D, a copy of a Garland County Court Order and discussed his representation of Mays Incorporated, a company that purchased fifty-seven acres of property in 2010 with plans for development. The company had been given assurances that water and sewer service would be available. Unfortunately, after several years, plus a lawsuit in federal court, the company was never able to obtain service. Mr. Young said his client paid taxes on infrastructure that exists in the improvement district the property sit on but he has ultimately failed to obtain water and service.

Senator Clark referenced a memorandum sent by e-mail from Bill Burrough, Deputy City Manager, City of Hot Springs stating, that he was unable to attend today's meeting. Mr. Burrough asked that information contained in his memorandum regarding water connection applications be provided to the members (Handout 4). The memorandum was distributed to Task Force members. Senator Clark commented on the number of applications versus connections shown in the memorandum. He explained that although it appears everyone who applies for service is receiving service, his personal experience through dozens of interviews differs from what is shown. Senator Clark said the people he has talked with have said they are being told to not apply because the city will not provide service to them.

Chris Thornton, J.C. Thornton Company, was sworn in under oath by Senator Clark. Mr. Thornton described his experience with the City of Hot Springs when attempting to develop 17 acres of land in Garland County. His family built a 110 unit apartment complex on seven acres of their property, which they then sold for financial reasons. Several years later his family planned to develop the remaining 10 acres. He said he made every effort to comply with the city's demands, including agreeing to annexation. All his efforts failed and he and his family are left with property they cannot develop.

David Hull, Sonic Drive-In franchisee, was sworn in under oath by Senator Clark. Mr. Hull told the Task Force members he owns 33 Sonic Drive-Ins locations with 30 located in Arkansas. Each facility costs \$2 million to build. He purchased property in Garland County being unaware of the issues involved in obtaining water service, particularly as there was already a meter on the property. Mr. Hull explained his frustration and disbelief at the difficulties he encountered in his conversations and dealings with the City of Hot Springs. He said throughout Arkansas, where his other businesses have been built, he has never encountered this type of problem, particularly when a \$2 million project is involved. Mr. Hull abandoned the project.

Stan Smith, owner, S&S Plumbing Business Properties, was sworn in under oath by Senator Clark. Mr. Smith related the issues he encountered with the City of Hot Springs. He owns property in Garland County within the Highway 70 West Improvement District. Mr. Smith had planned to develop his property but was repeatedly denied water and sewer service by the city, being told they would not provide service to a commercial business. He was further told that if his property were within the city limits he could have water and sewer service.

Jay Grinder, General Manager, Wilson's Home Improvement, was sworn in under oath by Senator Clark. Mr. Grinder described his company's experience attempting to build on seven acres of property in Garland County. Mr. Grinder and Paul Wilson, owner of the company, began the process of meeting with city officials. They hired a local engineering firm believing the process would move forward. The project was presented during a City Board meeting and was declined. The company then hired an attorney, who met with the city attorney, to work through the issues with the city. One reason the city gave for refusing service was their position is that no commercial building projects would be approved. Mr. Grinder said the company persisted and pursued a lawsuit. Before the lawsuit was filed, the city relented and allowed the company access to water. Mr. Grinder said the city caused the company to delay their project and cost the company excessive expenses. He believes the City is intentionally placing obstacles to commercial development which impacts employment and tax revenues for the County.

Andy Bishop, co-owner, Bishop Aviation, was sworn in under oath by Senator Clark. Mr. Bishop gave an overview of the losses his business suffered from their dealings with the City of Hot Springs. Beginning in 2014, the Walmart Corporation offered to purchase six acres of property from his company for approximately \$1 million. Mr. Bishop said the offer was accepted with the understanding that Walmart could obtain water and sewer service. Walmart requested six months to complete an evaluation of the property. Walmart asked for a 30 to 90 extension on their agreement due to issues they were having with the City of Hot Springs Water Association. The Walmart purchase collapsed due to the inability to obtain service from the city. Mr. Bishop has been unable to develop the property he owns in Garland County even though a main water line crosses directly in front of his property.

Garland County Judge Rick Davis was sworn in under oath by Senator Clark. Judge Davis discussed a memorandum (Handout 2) concerning the Hot Springs Water System:

- Property owners who reside in an accepted water improvement district outside the city limits of Hot Springs are being denied the right to service which impedes development of their property
- Many property owners have been given no reason for denial of service or are being told not to bother to apply for service
- Claims of a water shortage is given by the city to the county residents, but no shortage exists within city limits

Judge Davis concludes from documents and evidence that the reason water connections are being denied by the city in unincorporated areas is a strategy to stop growth and development outside the city limits. Judge Davis described a discussion initiated by the current Hot Springs City Manager who offered an agreement to Judge Davis that would eliminate the denial of service to county residents. The agreement would involve the county forfeiting its half-cent sales tax revenue in the amount of \$3.3 million annually and direct the monies to the city. Judge Davis declined the offer and asked the members of the Task Force to recommend actions that will provide the citizens of Arkansas some form of consumer protection to prevent using essential services, such as water,

from being used as a tool to control development, thereby reducing property values and economic growth.

Senator Alan Clark was sworn in under oath by Representative Lemons. Senator Clark gave an overview of his experience pertaining to his business, Clarks Building and Decorating Center, in Garland County. In 2001, he and his business neighbors learned that a water improvement district was being proposed, which would cause a high property assessment rate to be charged to property owners. Senator Clark and five other businesses received approval from the city to run a water line a half mile. The businesses used an eight-inch water line, which was paid for by the businesses under a written agreement for a five-year period. This would allow additional connections to be added and a pro-rated share of the initial infrastructure investment to be paid back to the property owners.

Senator Clark explained that the project his business and others completed differs from the statements made by the Hot Springs city attorney during the 2017 legislative Session concerning the improvement district's ability to allow connections. Senator Clark shared conversations he had in August 2015 with the Hot Springs city utilities director at that time. During their meeting, the topic of a water shortage was discussed. Senator Clark specifically asked the utilities director if there was sufficient water to provide service to county residents. Senator Clark was told that the water supply was not the issue, but instead that the system was badly degraded and needed to be upgraded and repaired. If the city would make the necessary upgrades there would be no capacity problems or water shortage issues. Senator Clark also shared his personal experience of a conversation with the Hot Springs city manager who indicated the water issues would cease if the county would provide the city with \$3.3 million annually in tax revenues. Senator Clark briefly discussed his meeting with Don Zimmerman, Executive Director, Arkansas Municipal League (AML), and AML staff who offered a solution to the water issues in Garland County. He was told the problems could be resolved if legislation was presented to implement a half cent sales tax in Garland County and divide the tax revenues with the city. Senator Clark closed by saying that these conversations were direct quotes made to him advising that the water problems would end.

Bob Driggers, retired electrical engineer, was sworn in under oath by Senator Clark. Mr. Driggers believes there has never been a water crisis or water shortage in Hot Springs. He did state that the city reached 80% capacity in 2012 when 20 gallons of water per day was being produced. Mr. Driggers referenced a recent newspaper article, which stated that the City of Hot Springs is producing an average of fifteen and half million gallons of water per day and is selling seven million additional gallons per day due to unaccounted for water leaks. He said the city has no conservation plan. He also believes there is no question that the city is obstructing economic development.

Senator Clark told the Task Force members they would be notified of the date for the next meeting. He asked members to focus on a vision plan and other suggestions for the Task Force to consider.

There being no further business, the meeting adjourned at 4:00 p.m.