

**MINUTES****WATER PROVIDER LEGISLATIVE TASK FORCE****SEPTEMBER 21, 2017**

The Water Provider Legislative Task Force met Thursday, September 21, 2017 at 1:30 p.m. in Room 151, State Capitol Building, Little Rock, Arkansas.

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

Non-Legislative Task Force members present: Jack Critcher, County Judge Rick Davis, Daniel Dawson, Jennifer Enos, Barry Haas, Kenneth Burleson, temporary designee for Alexandra Johnston, Dale Kimbrow, and Barry Weathers.

Other members present: Representatives Vivian Flowers and Roger Lynch.

**Call to Order**

Senator Clark called the meeting to order. He introduced Mr. Kenneth Burleson with the Arkansas Economic Development Commission (AEDC), who was temporarily filling in for Alexandra Johnston, who is on maternity leave. Senator Clark referenced a motion passed during the August 30, 2017 Task Force meeting that added two liaison members to the Task Force. Dr. Bob Blanz is the liaison from the Arkansas Department of Environmental Quality (ADEQ), and Jeffery Stone who is the liaison from the Arkansas Department of Health.

**Consideration of Approval of Minutes for August 30, 2017 [Exhibit C]**

A motion to approve the minutes of the August 30, 2017 Task Force meeting was made by Judge Davis and seconded by Senator Flippo. The motion carried.

**Discussion of Regulation and Jurisdictional Limitations and Consumer Protections**

Senator Clark recognized Cory Cox, Legislative Director, Office of the Arkansas Attorney General, and Charles "Chuck" Harder, Deputy Attorney General.

Mr. Cox discussed how jurisdictional limitations and regulation of utilities are unique because they are also government entities. A number of factors create a minor role in the jurisdiction over the utility entities by several agencies, but no agency has total control. Mr. Cox described the role of the Attorney General's office as that of a consumer advocate to protect consumers in utility matters. The Consumer Protection Division of the Attorney General's offices works to provide solutions to consumer issues.

Mr. Harder noted there are a number of statutes pertaining to the creation of water utilities; municipal water utilities, public water authorities, and water improvement districts. Each statute is different and outlines the rules for the type of entity the Attorney General's office has authority over, which include:

- The Attorney General's office represents the public interest of ratepayers for the only water utility in the state, Liberty Utilities Pine Bluff-Water subject to the jurisdiction of the Arkansas Public Service Commission (PSC)
- The Attorney General's office can act in matters before the PSC when rules are established for the Liberty Utilities Pine Bluff-Water by intervening and participating in the setting of rules similar to rules established for electric and natural gas utilities
- The PSC does not regulate municipal water systems

- The Attorney General's office has no authority over the rights of consumers in water improvement districts and no legislative protections for consumers currently exist

Mr. Cox and Mr. Harder were asked what, if any legislation exists for the protection of members of water improvement districts when a person is denied service. Mr. Cox said the Attorney General's Office has received complaints from citizens involving water improvement districts and other improvement districts. He does not know of any remedy available to consumers. He offered to look into the question of is there any mechanism available to address concerns by the public. Mr. Harder also offered to try to determine an answer. He added the role of the Attorney General's Office is to mediate between consumers and utilities because it has no authority to enforce consumer rights.

Mr. Haas addressed the Task Force and described the formation of the Suburban Water Improvement District 349, the water services it provides, and its legal obligations:

- The district is located west of the Little Rock city limits and encompasses 1,500 acres
- The average individual parcel was originally five acres
- The district has been subdivided over a number of years
- The district obtained loans from ANRC in 2003 and 2005 to build infrastructure
- The district turned over legal ownership of the system to CAW but retained the infrastructure indebtedness
- When the district pays off its debt, it will be dissolved and will no longer be considered a legal entity under Arkansas law

Representative Lemons addressed a question to both Mr. Cox and Mr. Harder concerning Act 987 passed in the 2017 legislative Session. He read the introduction of the Act:

- An Act to amend the law concerning non-municipal domestic sewer treatment works, to increase contributions to a non-municipal domestic sewage treatment works trust fund by non-municipal domestic sewage treatment works, to require documentation concerning future operations from non-municipal domestic sewage treatment works, and to prohibit new water connections to non-compliant non-municipal domestic wastewater treatment systems; and for other purposes.

Representative Lemons said he believes it was not the intent of the author of the bill to create an issue for non-municipal wastewater systems. Instead, the concern which initiated the legislation was to ensure that there is some form of a trust fund for privately owned systems in the event the system becomes bankrupt. Representative Lemons further noted he has received phone calls from water authorities and wastewater operators who have been sent letters from the Arkansas Department of Environmental Quality (ADEQ) stating that the entities must participate in the trust fund. Representative Lemons asked if the Attorney General's office has any information regarding the issue. If not, then the matter should be researched and the information provided to the Task Force at a future meeting. Cory Cox responded and said he will review the issue and advise the Task Force of what he learns.

Dr. Bob Blanz, Water Division Manager, ADEQ, addressed the question Representative Lemons raised. He agreed with Representative Lemons' comments regarding the intent of the legislation. He also said he was surprised to hear that water authorities are receiving letters from ADEQ requiring participation by a water authority. Dr. Blanz offered to research the issue.

Task Force members who represent various water providers discussed aspects of the entity they represent.

- Dale Kimbrow, Manager, CAW, stated that CAW was established by legislation to provide water service for the residents of Little Rock and North Little Rock. CAW also serves

approximately 30,000 individuals located outside of the city boundaries, but within its service area

- Daniel Dawson, General Manager, Searcy Water Utilities, explained that the Searcy Water Utility serves the majority of White County residents directly, or indirectly. It also has seven rural associations connected to the utility. The Searcy Water utility has never denied water service to individuals who are willing to pay the cost associated with obtaining service
- Jennifer Enos, Wastewater Facilities Director, Springdale Water Utilities, stated her utility has a defined service boundary, which is adjacent to other city boundaries, plus a rural water association boundary. Springdale Water provides water outside the city limits of Springdale. If a customer is within another city's boundary, an agreement is made with that city to allow the customer to be provided service and pay for the infrastructure. Ms. Enos said that Springdale Water has never denied service within its service area

Senator Clark recognized John Bethel, Executive Director, Arkansas Public Service Commission (PSC). Mr. Bethel explained the PSC has regulatory authority over only one water utility in the state, Liberty Utilities-Pine Bluff. The jurisdiction of the PSC was changed in previous years to include the current criteria, which sets a size limitation with a guaranteed \$1 million in annual revenue, and must be a privately-held company.

The majority of water utilities in Arkansas are either municipal systems, water user associations, or water improvement districts. None of those entities are subject to jurisdiction by the PSC. Instead, they are subject to the jurisdiction of the governmental entity which created them. Municipal systems are subject to a city council or city utility commission. Water improvement districts and water users associations have a local board or an elected organization which governs it. The PSC regulates and has jurisdiction over electric, natural gas, and telephone. The primary mission of the PSC is to ensure that the regulated utilities provide safe and reliable service at reasonable prices. It also governs the utilities operations ensuring they meet minimum quality of service standards.

Senator Clark recognized Ryan Benefield, Deputy Director, Arkansas Natural Resources Commission (ANRC). Mr. Benefield gave a PowerPoint presentation regarding the Arkansas Water Plan Compliance and ANRC's oversight of financing water projects. The statute that created the Arkansas Water Plan Compliance states in part that no political subdivision or agency of the state shall spend any state funds or engage in any water development project without approval under the Arkansas State Water Plan. Mr. Benefield explained that his slides show geographic areas in the state being served by various water development projects. He reviewed the history of the ANRC approval policies, including:

- In 2007, the ANRC began reviewing geographic areas
- In 2011, sewer projects were required to receive approval by the ANRC
- In 2011, ANRC began the process of approval of master plans for water and sewer systems under the Arkansas Water Plan Compliance
- Master plans must specify a timeframe for each construction phase for the area to be served, including a maximum ten-year plan projection

The ANRC must approve systems that are acquired by a city through annexation in rural areas of a county. A city has the right to potentially acquire the service area of the annexed property and work with the rural provider to take over the service area. However, the ANRC must approve the plan. The ANRC looks at the traditional water plans and compliance issues. It must also determine a proper value. Other legislative provisions govern city annexations, which include provisions for a city acquiring parts of a water system.

Mr. Benefield described a case reviewed by the ANRC, including its findings of fact and conclusions of law, and an order it issued in the case. The case involved the City of Sherwood. The City of Sherwood requested transfer of a disputed area from the City of Jacksonville service area to Sherwood. The disputed area is within the city limits of Sherwood. The disputed areas were approved by the ANRC to be within the City of Jacksonville's service area for water service. ANRC's order was approved by its Commission. Currently, no water or sewer service is being provided in the disputed area. The City of Jacksonville stated it would provide water and sewer service to the area if the area was annexed into Jacksonville. The City of Sherwood is willing and able to provide service to the disputed area. Mr. Benefield said this is an issue that falls under the master plan and he explained how the ANRC processed the case.

### **Discussion of Local Municipal Water Issues**

Mr. Greg Heslep, Private Developer, was sworn in under oath. Mr. Heslep described his involvement in the dispute between the cities of Sherwood and Jacksonville. As a small developer Mr. Heslep is attempting to develop property in an area that he was told by the seller of the property that is in the city limits of Jacksonville. When a request was made for water and sewer service to the Jacksonville Water Department, he learned the property is actually within the city limits of Sherwood. He learned the property is part of annexation by the City of Sherwood acquired through an election held several years in the past. Although the property in question is within the Sherwood city limits, it is surrounded by the City of Jacksonville. An engineer working with Mr. Heslep asked permission of the City of Jacksonville to tie onto water and sewer service through the Jacksonville Water Utility. Jacksonville denied the request and would not provide service unless the City of Sherwood would de-annex the property, which would allow Jacksonville to annex the property. Mr. Heslep said the dispute has resulted in ongoing litigation between the two cities, which has postponed his development for two years and has yet to be resolved. Senator Clark explained that Mayor Gary Fletcher, City of Jacksonville, informed him he would not attend the meeting based on the advice of the Jacksonville city attorney.

Senator Clark recognized Mayor Virginia Young, City of Sherwood, Stephen Cobb, City Attorney, City of Sherwood, and Roger Fitzgibbon, Attorney, Gill Law Firm. Each person was sworn in under oath. Mayor Young discussed the dispute between the cities of Sherwood and Jacksonville concerning undeveloped property, which includes the property Mr. Heslep is trying to develop. She described the disputed area as a small portion of a much larger undeveloped area in Sherwood city limits, which was obtained by annexation through an election.

Mayor Young described the request Sherwood received from the City of Jacksonville following the annexation. Sherwood was asked to allow a water tower to be built within its city limits. Sherwood allowed the tower to be built and waived any fees associated with zoning and construction of the tower. Sherwood is now asking the City of Jacksonville to provide water and sewer service in the area currently being disputed. The City of Jacksonville has denied the request and has stated it will not provide service to the area unless Sherwood will de-annex the property.

Senator Clark recognized Roger Fitzgibbon, Attorney, Gill Law Firm. Mr. Fitzgibbon told the Task Force members he represents the City of Sherwood in the ongoing litigation between Sherwood and Jacksonville regarding the dispute for water and sewer service. Mr. Fitzgibbons outlined the position of the City of Sherwood in this particular case.

Legislators discussed the dispute between the cities, and considered possible solutions for similar issues that may arise in the future.

Senator Clark recognized Mark Hayes, Director of Legal Services, Arkansas Municipal League. Mr. Hayes was asked if statutes governing annexation require a municipality to define its service areas.

Mr. Hayes advised that annexations require a declaration of services to be provided, but does not enumerate the services in the statute because it is left up to the local government to determine what it can and cannot afford to do.

Mr. Benefield was asked to prepare recommendations to be provided at a future meeting to address the type of water issue presented at today's meeting and whether or not they will require legislation or policy changes by the ANRC.

Senator Clark announced that the Task Force will meet at 1:30 p.m., October 11, 2017 in Room 151.

There being no further business, the meeting adjourned at 3:45 p.m.

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