



## **DELBERT HOSEMANN** *Secretary of State*

### **Mississippi Secretary of State 2011 Business Law Reform Study Groups Minutes of the First Meeting of the Rural Water Association Laws Study Group June 30, 2011**

The first meeting of the Rural Water Association Laws Study Group was called to order on Thursday, June 30, 2011 at 11:04 A.M. at the Office of the Secretary of State, 700 North Street, Jackson, Mississippi. A list of the persons who were present in person or by telephone is attached in Exhibit A.

#### **Welcome and Introduction**

Ryan Pratt, Assistant Secretary of State for the Division of Policy and Research, welcomed the members and allowed introductions for all of those present in person and by telephone. He also discussed the importance that the Secretary of State and his office place on Mississippi's Rural Water Associations.

#### **Business Services Overview**

Tom Riley, Assistant Secretary of State for the Business Services Division, gave a brief overview of his division and its interaction with rural water associations (RWAs). As many RWAs are first registered as nonprofits with the Secretary of State's office, he reviewed the updates to the Non Profit Status Reporting system, and thanked RWAs for serving as the guinea pigs of the project. He reminded all present members to encourage their associations to return the status forms within 90 days of their receipt, or risk being administratively dissolved.

#### **Overview of Previous Study Group Success**

Mr. Ryan Pratt reviewed a summary of the business reform legislation which was planned and passed by previous study groups, to give the group an idea of what the end result of this group will be. He also discussed the revisions to the Nonprofit Act, as those more directly affect RWAs. Secretary of State, Delbert Hosemann also addressed the group and thanked them for their time and dedication to this group. He stated the important role that RWAs play in Mississippi and expressed his desire that they remain private entities in the future. He also

expressed his concern that upcoming Environmental Protection Agency (EPA) fines that are to be imposed in the near future will force RWAs to be overtaken by other entities following their inability to pay. He stated his wish for this group to correct any of these foreseen issues before a catastrophe arises, and propose legislation. He recognized the monetary strains facing RWAs and hopes that this group can create a good business and financing structure to assist RWAs in the future. He expressed his interest in looking into venues for RWAs to raise their own capital. He again thanked the group for their time and dedication to this very important issue facing Mississippi, and expressed his enthusiasm for what will be created from this group of members in the near future.

### **Co-Chairs Address to the Group**

Ryan Pratt introduced the two Co-Chairs of this year's RWA Laws Study Group, Mr. Kirby Mayfield and Mr. Ken Herring. Mr. Mayfield then addressed the group with his goals for this study group and reviewed some previous legislation effecting RWAs as well as some matters he feels should be looked into by the group. He first discussed the 2003 legislation which would allow for RWAs to convert to public water authorities. While this was first embraced by many associations, he discussed many of the reasons it was later rejected by associations around the State. Some of the reasons for rejection were that this Senate bill would threaten the RWA's 1923(b) status, and it would make RWAs a government entity, therefore putting them under government purchasing status rules. He feels that tweaking these three areas may increase the effectiveness of the legislation to better assist RWAs. Mr. Herring then thanked the group for their efforts and discussed the need to hit the ground running with any ideas and proposals wished to be made.

### **Update from the USDA Rural Development**

Bettye Oliver and Patricia McDowell gave an introduction and overview of the Rural Development's involvement in the grant writing process to RWAs. Ms. McDowell reviewed the funding process and provided handouts to the group on which projects were already funded for this coming year and an overview of the general budget projections for coming years. Ms. Oliver reviewed the new strike force initiative available to any counties with persistent poverty. There are fifty two counties in Mississippi that meet the definition of "persistent poverty." She also discussed ways to request additional funding from the national office. Mississippi currently ranks 7<sup>th</sup> in the Nation for Rural Development funding.

### **Update from the Department of Health**

Mr. Keith Allen from the Mississippi Department of Health was then introduced to the group and discussed the role the MDH plays in the rural water arena. He provided an overview of the grants given through his office, and noted that the amount distributed ranges anywhere from 10-14 million dollars. The MDH currently has about 219 million dollars distributed in loans, with a repayment stream of about 10 million dollars per year. He also discussed the fines and penalties that are issued through his office, and assured the group that any penalties in the form of a fine are issued as a last resort. He personally feels that 90% of the rural water associations do an excellent job, and operate in compliance. However, about 10% of the

associations are experiencing difficulty complying. Mr. Allen then discussed the new groundwater rule which was enacted two years ago and will likely pose a problem for some of the smaller water systems as it comes to full effect this coming year. Mr. Allen noted that funding and assistance for the smaller problematic systems will be key in ensuring their success in the coming years. Mr. Allen then took several questions from the group about several new and revised rules which are now affecting water systems. The first was in regards to the distribution rule, which will require operators to complete paperwork rather than field samples. Mr. Allen expressed his concern that some of the smaller systems may have trouble converting to the new system, both financially and logistically. Mr. Allen was then asked about the penalties the water systems will face in the event they violate the new groundwater rule, to which he responded that the fine is set to be \$25,000 per day, per violation. Again, Mr. Allen assured the group that the heavy fines are used as a last resort, and that the intent of his office is to avoid getting to that point. Many questions were asked by the group about the studies done by the EPA when creating these new laws. Many group members expressed their concern that the majority of these rules are written to address larger systems in other areas of the country that are distinctive from Mississippi. Mr. Allen expressed his sympathies to the group, but assured them that these rules are made at a much higher level and agreed that sometimes they do have the potential to be complicated for smaller systems. However, he noted that his office tries to overcome this disparity through extensive training opportunities. He also noted the success seen by those training sessions, specifically following Hurricane Katrina in 2002. Secretary Hosemann expressed his interest in conducting a survey of RWAs to see the hard costs they incur and to determine the cost of implementation of any new rules. Next, the possibility of allowing smaller systems to tie into larger systems while allowing the larger systems to avoid any liability was discussed. The idea is one which the group believes may alleviate some of the issues faced by very small, remote systems; however, the problem lies in finding ways to incentivize the larger systems to allow for these smaller systems to tie in. It was proposed that the group discuss ways to allow this to happen, while eliminating any legal liabilities the larger systems will face for any action by the smaller area.

### **General Comments from Group Members**

Mr. Jim Herring thanked Secretary Hosemann for his interest in this important area of law. He encouraged all RWAs to generate a positive relationship with the Secretary of State's Office and to comply with the requirements of the Nonprofit Act. He also asked the group to consider setting a few guidelines to adhere to throughout their discussions over the next several months. He discussed the "certificate of convenience and necessity" which RWAs obtain through the Public Service Commission and reminded the group that this is viewed as a property right which cannot be dealt with lightly. He noted how seriously the RWAs hold this right and how important it is to them to protect. The job of the RWA is to provide safe and clean water to individuals; if they fail in doing that then the Public Service Commission can pull their certificate. This serves as the check and balance on allowing the RWAs to hold that power in a property right. He also discussed 1926(b), the federal statute which protects entities that provide service to rural areas. Mr. Ken Herring gave an overview of the financial disposition of a water association, which provided some light as to why they are so protective of their property rights. A water association may make money off of a large subdivision but may lose money on a smaller neighborhood far away from the central lines. For that reason, they must be protective of

owning the rights they do. Following the comment on the state of RWAs finances, the group then discussed some of the issues they face in obtaining financing. Some of the larger associations must have their own grant funding, as they do not qualify for any grants with the Rural Development. However, with the new EPA guidelines, the cost of compliance will be higher but the money available will maintain its rates. Mr. Allen noted that although we are a poor state, we have very few violations. However, in order to get the bigger grant funding, RWAs need to have more violations. In essence, RWAs are penalized for being successful.

Next, an overview of the Blue Field Litigation was given by the Jim Herring and Brett Harvey, who worked on separate sides of the issue. The general theme of the discussion was the issues surrounding the interpretation of the federal statute, 1926(b), which prohibits a government entity from encroaching on any services being provided to a rural area by the RWA. They discussed the standard which is currently being used, the *North Alamo* standard, and noted problems in its inflexibility. It was proposed that perhaps the state look into finding a way to create a rule which assisted in its interpretation; however the logistical difficulty of doing so was also noted by the group.

Mr. Grant Mitchell then discussed the current set up for RWAs in states such as Alabama, which combines water and fire into authorities. He expressed his concern in mirroring such a system, since doing so would put the RWAs under government regulations for payments and purchasing.

Secretary Hosemann advised the group on considering what should be done from here. Some questions he posed were: Should RWAs sell the property right? Should they be bought out by counties and municipalities? Where is the money going to come from? How can we obtain a cost/benefit analysis? A member of the group responded to one of the questions posed, and gave an overview of the way in which a county or municipality may currently acquire a RWA, currently. They follow a three step formula in calculating the amount to be paid, with any excess money going back to the Rural Development to pay off the notes. Mr. Herring also noted that most nonprofits have a provision written into their organizational documents which details what will happen in the event there is excess cash from a sale, even after all debts are paid.

Mr. Allen again praised the efforts of training and mergers. He encouraged the group to look into possible ways to require more training, specifically of the board. Currently, board members are elected and may serve on a board for 30-40 years after only completing 8 hours of total training over that entire period of service. They need to know more, especially in light of the many changes facing RWAs in the coming years and the potential legal liability.

### **Summary and Closing Remarks**

Mr. Pratt offered up the possibility of dividing into subgroups to further discuss the areas discussed in today's meeting. Mr. Lucien Bourgeois suggested having a representative from the Mississippi Board of Supervisors present at the meeting, as they have an interest in some of the areas discussed. Secretary Hosemann summarized the general theme of the meeting and suggested looking at the following; 1) mergers and acquisitions, 2) an alternative to financing that is a back stop to federal funding in the event it is not enough, 3) a review of the 2003

legislation and its shortcomings, 4) look into limiting the liability of individual board members, 5) look into a possible survey to determine how much implementation of new rules will cost, 6) look into including a member from the board of supervisors in the next meeting, 7) gain legislative support for the changes being sought. Following Secretary Hosemann's summary, Mr. Pratt and Mr. Mayfield decided on the following subcommittees, and encouraged all members to sign up for one. 1) Board Training, 2) Review of 2003 legislation, 3) Mergers and Consolidation, 4) Additional Financing. Mr. Mayfield reminded everyone of the upcoming meeting on July 19, 2011 at the Ladner building. There being no other business, the meeting was adjourned at 1:06 P.M.

**EXHIBIT A**

**Minutes of the Rural Water Association Laws Study Group, Meeting # 1**

**June 30, 2011**

Members in Attendance:

1. Keith Allen
2. David Boackle
3. Lucien Bourgeois
4. Terry Boyette
5. Susan King on behalf of John Brunini
6. Thomas Butchart
7. James Elliott
8. Louis Hand
9. Steven Hardin
10. Brett Harvey
11. James Herring
12. Kenneth Herring
13. Sen. Perry Lee
14. Kirby Mayfield, Co-Chair
15. Grant Mitchell
16. Patricia McDowell
17. Bettye Oliver
18. William Rutledge
19. Joey Vaughn
20. Rep. Joseph Warren

Members in Attendance by Telephone:

1. Patrick Dendy
2. Christian Wadell

Secretary of State's Staff:

1. Delbert Hosemann, Secretary of State
2. Ryan Pratt, Assistant Secretary of State, Division of Policy and Research
3. Tom Riley, Assistant Secretary of State, Business Services Division
4. Justin Fitch, Senior Attorney, Division of Policy and Research
5. Brain Bledsoe, Special Counsel
6. Martin Hegwood, Senior Policy Advisor
7. Paige Rogers, Legal Intern, Division of Policy and Research
8. Taylor Baronich, Intern, Division of Policy and Research