



DELBERT HOSEMANN
Secretary of State

**Mississippi Secretary of State
2011 Business Law Reform Study Groups
Minutes of the Second Meeting of the Rural Water Association Laws Study Group
July 19, 2011**

The second meeting of the Rural Water Association Laws Study Group came to order on Tuesday, July 19, 2011, at 10:58 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 as Exhibit A.

Welcome and Introduction

Ryan Pratt, Assistant Secretary of State for the Division of Policy and Research, welcomed members and introduced all persons present and attending by telephone. He gave thanks for their dedication of time and effort to this study group. The group directed their attention to the minutes from the first meeting of the group. Upon motion, the group voted unanimously to approve the minutes as read.

Co-Chairs and Sub-Committees Address to the Group

Mr. Kirby Mayfield, co-chair of the Rural Water Association (hereafter, RWA) Study Group, thanked everyone for their dedication to the group. He gave a brief overview of the three sub-committees formed following the discussions of the first meeting. They are; 1) Board Training, 2) Consolidation of Smaller RWAs, 3) Review of Current Laws, Conversion, and Financing Alternatives. Mr. Ken Herring, co-chair of the sub-committee on Board Training, updated the group on his committee's progress. His committee reviewed the current law which mandates board training and proposed several changes for the group's consideration. The current law stipulates that all members of a community water system, except those operated by municipalities with a population of more than 10,000, are to attend 8 hours of training within 2 years of being elected. The group agreed to keep the population exemption for larger municipalities. The added language proposed by the subcommittee requires an additional four hours of training every four years for two officers of each board. The term "officers" is defined in the proposed language to include, "the legally responsible official of the community public water system and the mayor, mayor pro tem, the president, and the vice president of the board." The proposed amendment also gives the option for the named officers to appoint someone from among the existing board to attend in their place, given that the replacement completes the initial

8 hours of training required. Following these proposed amendments, a discussion was initiated by a group member about using the term “mayor” in the statute. A question arose as to whether or not this new language will now require that the mayor also complete the initial 8 hours of training. Members discussed possible interpretations before Mr. Brett Harvey offered the resources of his law firm to assist in the drafting of an amendment to provide clarity on the issue. The group requested the language of the amendment provide for the named officer to appoint someone to attend in his/her place; consistent with the current law.

A second issue arose concerning whether the appointed person must also be one who is a “legally responsible official”. Mr. Keith Allen of the Mississippi Department of Health (hereafter, MDH) suggested the language in the statute allow the officers to appoint someone to attend in their stead without adding too many stipulations. He explained once the statute is put into practice, agencies such as the MDH could administratively require names of the appointed persons to be submitted for approval. The group agreed to this suggestion.

Mr. Mayfield reminded the group of the upcoming meetings of the remaining two subcommittees scheduled for Tuesday, August 9th. The subcommittee on consolidation will meet via conference call at 11 a.m. The subcommittee on current laws and financing alternatives will meet via conference call at 1 p.m. Mr. Pratt informed the group that his office will send out instructions for the conference calls at a later date.

Alternative Financing and Conversion of RWAs from Private to Public Entities

Following Mr. Mayfield’s overview of the various subcommittees, the group members discussed which goals the committee reviewing current laws should prioritize. Mr. Mayfield encouraged the committee to explore possible ways to make the 2003 legislation more user friendly for RWAs, while protecting their 1926(b) status. Additionally he encouraged members to identify funding sources available to private entities, such as RWAs. Members, Sam Keyes and Chris Wadell, advised the group about classifying an RWA as a private entity because it would likely preclude them from most tax exemptions, which would otherwise be available if they were to convert to public water authorities. The 2003 legislation under review by the subcommittee would facilitate the conversion of water authorities from private to public entities. However, the legislation met resistance because many water authority boards believed their 1926(b) status would be affected by such a conversion. Mr. Brett Harvey noted in his reading of the Federal Statute granting such protection, he saw nothing that would void the protection should RWAs convert from private to public entities, because the language applies to all “associations”, regardless of classification. Mr. Jim Herring maintained the vague and ambiguous nature of the statute provides an uncertainty as to how a public entity would be interpreted. Due to this uncertainty, however slight it may be, most all water authorities are advised to remain private entities following the enactment of the 2003 legislation. Secretary Hosemann encouraged the group to explore protections provided in 1926(b), and look into possible ways to offer the same protections to public entities. He is appreciative of the fact that the RWAs do not want to lose this right, but encouraged the group to be open to considering other ways to give RWAs rights and protections, while also allowing them to secure financing as a public entity. He also acknowledged some of the concerns with logistical difficulties RWAs

would face when converting to a public entity; such as purchasing requirements, and administrative regulations.

However, this may be an area where the RWAs should compromise in exchange for the ability to secure alternative means of financing. He posed the following question: Is bond financing attractive enough to RWAs, that they are willing to comply with state regulations? He candidly stated that without some form of state oversight, bond authority will not be provided to RWAs by the legislature.

Mr. Jim Herring suggested a protection similar to 1926(b), written into state law, would provide possible solution. He mentioned that the larger public utilities, which are governed by the Public Service Commission, were successful in securing a similar state protection several years ago; however, it is not applicable to RWAs.

Next, members discussed the differences between grants and bonds, and the accessibility to each. Mr. Ken Herring stated that grants issued to RWAs through the Rural Development Authority (hereafter, RDA), could take up to 1-3 years to obtain. Mr. Chris Wadell informed the group that bonds may be issued within 90 days where there are no significant issues, but could take up to six months or a year were there are complications. Mr. Ken Herring believes this to be an attractive option for some associations in need of quick financial assistance. Ms. Bettye Oliver of the RDA stated that future grant funding, at least through RDA, will be significantly less in the years to come. Therefore, RWAs should plan to secure other financing avenues to fund their operations. Secretary Hosemann suggested the primary financing mechanism will likely become loans as the RDA receives less funding for grants. Additionally, he said loans will not substantially vary from those found in the private sector.

Mr. Terry Boyette asked the group to consider providing an option to convert from a private entity to a public water authority, so a RWA board could convert voluntarily if it so chooses. If the association is in need of bonding authority, it would have the option of converting; however, it would be under no requirement to do so.

Consolidation of Smaller Water Systems

Mr. Ryan Pratt asked of the group: for those systems that do wish to consolidate, should there be a minimum number on how many connections they must have in order to do so? Also, what ways can we incentivize the bigger water associations to take over the smaller systems, and what can we do to incentivize the smaller systems to agree?

Mr. Mayfield stated that a common number in the industry to distinguish a small system from a larger one is 1,000 connections. Ms. Oliver agreed with this statement. Mr. Allen also agreed and stated that a system large enough to sustain 1,000 connections operates more like a business than a mom-and-pop water system. It could be an incentive for some of the smaller associations with under 1,000 connections to merge together in order to reach that number. Mr. Allen was asked by Mr. Pratt how many systems currently have fewer than 1,000 connections. He answered that about 60-70% of the systems currently existing in Mississippi are under the 1,000 mark. Mr. Jim Herring reminded the group that the Public Service Commission, by

statute, has the final authority to accept or reject all consolidations of water systems. Additionally, any consolidation must also be voted on by 2/3 of both associations memberships. Mr. Ken Herring also noted that a population of less than 3,300 is typical in the industry for defining a “small system”, and suggested keeping with that number as the definition used for these purposes. Mr. Allen agreed 3,300 is used often, but noted several other figures are used in other places as well.

Ms. Oliver suggested we have a provision which allows for the smaller associations to be represented on the board of the larger, acquiring association following any mergers. She also suggested changing the tax code to eliminate the federal income tax paid by municipalities. Furthermore, she proposed that the group look into waiving the requirement that RDA may only provide funding to a water system with a population area of less than 10,000.

Mr. Pratt asked Mr. Allen to summarize the reasons why some water systems have merged in the past. Mr. Allen said that the majority of mergers occur when one system gets into financial trouble, or is unable to continue providing services. Many of the successfully merged systems were already connected for emergency purposes. Following financial difficulties or inability to continue operations, it was fairly easy for one system to take over the other. Also, those systems acquiring new customers following a merger are given priority access to any grant funding available. Mr. Allen stated that if mergers are made financially attractive to larger systems, they are going to happen. He reminded the group of The Groundwater Rule going into effect in the coming months is going to have a very big impact on the smaller associations. Following 6 months of noncompliance with any violations of the rule, the MDH has no choice by the Environmental Protection Agency (hereafter EPA) but to issue a penalty. Such penalties will likely carry very large fines. The inability of the association to pay then results in foreclosure by the RDA. Ms. Oliver then shared with the group the case of a water system in Antioch, Mississippi which successfully merged with the City of Ripley several years ago. The smaller system was in financial trouble and went to the city for assistance. The City of Ripley agreed to take it over. It was viewed as a win-win for both systems because the larger system gained a customer base, while the smaller system avoided any foreclosure proceedings following their inability to pay. Mr. Harvey encouraged the group to find ways in the existing law to facilitate the mergers of willing parties, such as the ones discussed by Ms. Oliver. Many of the group members agreed with this, acknowledging that any way to encourage the merger of willing participants prior to foreclosure proceedings and penalties, would be beneficial to smaller, struggling systems.

Following this discussion, Secretary Hosemann asked Ms. Oliver to give an overview of the procedure once systems are seized by the RDA. MS. Oliver answered that seizure of a system is seen as an absolute last resort by the RDA. Since her time at the RDA, she is only aware of one seizure, and it was sold off. Secretary Hosemann then inquired about the liabilities attached to a seized system, and whether or not those are sold off with it. Mr. Allen answered that the liabilities technically follow the system, however, in practice they are likely not actually seen by the buyers. In explaining this process, he gave an example. Under the groundwater rule, a water association could potentially see a fine of \$25,000 per day, per violation. There is also the possibility of those same fines being personally imposed upon all responsible parties. The law which imposes such fines also stipulates that any money collected must go to correcting the

problem. Essentially, RDA will fix the problem, generally through sale. Meaning, any money collected from the sale will go to erase the debt owed by such penalties. Also, the formal procedure for assessing penalties is through a hearing with the Attorney General's Office. However, Mr. Allen stated that the majority of the time the hearing phase is never reached, as the parties are allowed to negotiate away their personal liabilities. Generally, they do so by agreeing to merge or to sell the system. Following this example and explanation, Secretary Hosemann encouraged the group to brainstorm ways to incentivize mergers before being forced to use the stick of personal liability and subsequent negotiations. The number of systems, according to Mr. Allen, who are going to find themselves in trouble in the coming months, is around 100-200. The number of systems estimated to have substantial issues in the coming months, is likely around 50-100. Following this report, Secretary Hosemann encouraged the group to determine their target goal; are they trying to target the 50-100 problematic systems or are they concerned with all those systems which may need assistance? Mr. Allen responded to this question by stating that he sees the group attempting two things: First, he feels they need to work on those systems which are currently experiencing difficulties; Second, they need to address ways to merge smaller systems, even those which may be problem free at the moment. In doing so, they will address the problems bound to arise in the next 10-20 years as those smaller systems need improvements and repairs. Secretary Hosemann, along with the group members, collectively agreed to tailor their focus to those 50-100 systems which are going to experience substantial issues in the coming months, and are at the risk of closure. In doing so, the group needs to consider a plan B alternative to grant funding, as it may not be available.

Finally, Mr. Ken Herring suggested that the group consider those water systems, which are currently doing well, but will need assistance in the near future as the 40 year loans they took in the 1960s, come due. Many of those systems are currently viewed as financially stable and are not seen as a posing a problem. However, while those systems can pay their bills, the vast majority are not in a position to save funds, and will likely find themselves in trouble as they begin the process of securing additional grants.

Summary and Closing Remarks

Mr. Kirby Mayfield reminded the subcommittees of their respective conference calls on Tuesday, August 9th, at 11 a.m. and 1 p.m. He also informed the group that the meeting scheduled for August 2nd has been cancelled. A reminder was made that the next meeting will be held on August 16, 2011 from 10 a.m. to 12 p.m. at the North Street Office. There being no other business, the meeting was adjourned at 12:34 p.m.

EXHIBIT A

Minutes of the Rural Water Association Laws Study Group, Meeting # 2

July 19, 2011

Members in Attendance:

1. Keith Allen
2. Sam Keyes on behalf of Lucien Bourgeois
3. Terry Boyette
4. Susan King on behalf of John Brunini
5. Thomas Butchart
6. Rep. Jimmy Ellington
7. Jim Elliott
8. Buddy Hand
9. Steve Hardin
10. Brett Harvey
11. Jim Herring
12. Ken Herring
13. Kirby Mayfield, Co-Chair
14. Grant Mitchell
15. Bettye Oliver
16. William Rutledge
17. Derrick Surrette
18. Joey Vaughn
19. Chris Wadell

Members in Attendance by Telephone:

1. Ed Egger

Secretary of State's Staff:

1. Delbert Hosemann, Secretary of State
2. Ryan Pratt, Assistant Secretary of State, Division of Policy and Research
3. Justin Fitch, Senior Attorney, Division of Policy and Research
4. Brian Bledsoe, Special Counsel
5. Paige Rogers, Legal Intern, Division of Policy and Research