



DELBERT HOSEMANN
Secretary of State

**Mississippi Secretary of State
2011 Business Law Reform Study Groups
Minutes of the Third Meeting of the Rural Water Association Laws Study Group
August 16, 2011**

The third meeting of the Rural Water Association Laws Study Group was called to order on Tuesday, August 16, 2011 at 10:00 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 group back and opened the floor for introductions. He thanked everyone for participating in the group and taking time out of their day to be at the meeting.

Approval of Previous Meeting's Minutes

Mr. Pratt presented the previous meeting's minutes for approval by the study group and asked for any questions or comments. The study group approved the previous meeting's minutes by a unanimous vote without any questions or comments posed.

Chairperson Remarks

Mr. Ken Herring, Co-Chair, welcomed the group to the meeting and explained that the other Co-Chair, Kirby Mayfield, could not attend due to his attendance at a funeral that morning. Mr. Herring then explained he spoke with the Mississippi Department of Health (hereafter, MDH) about the troubled systems and the troubled systems were defined as systems that scored three or below on their Mississippi Capacity Assessment. MDH rates systems on a zero to five scale. Mr. Herring then gave an outline of the percentage of failing water systems in Mississippi. The outline is below:

- Water associations – 5.75%;
- Municipality – 10.8%;
- Private Systems – 44%; and

- Utility, state and federal – 10.6%.

At this time, Mr. Herring suggested that the group turn its attention to the committee reports.

Board Training

Mr. Herring introduced a draft amendment of Section 41-26-101 as drafted by the subgroup on board training. Mr. Brett Harvey asked the group to change the language of the amendment from “requested” to “required”. Mr. Herring explained that the target of this amendment was to make the boards aware of new laws and regulations. The subgroup recommended that the entire group adopt this amendment.

Mr. Pratt asked who kept track of the credits and administers the training. Mr. Keith Allen, Mississippi Department of Health, informed the group that MDH checks the certificates from the training when they are inspecting the water authorities. Senator Perry Lee added that the Mississippi State University Department of Extension Services also conducts board training.

A group member asked how this board training would interface with Mississippi Rural Water Association training. Mr. Ken Herring opined that this board training would just be an extension to the MRWA training. Furthermore, he commented that there is a requirement of eight hours of training once elected to the board and then no requirement of more training. Mr. Jim Herring explained that the training focuses on the fiduciary duties, conflicts of interest, and overviews of certificates of public convenience/necessity.

Mr. Harvey suggested the group should change the language from “requested” to “required” in the amendment and have the group vote on the change. Mr. Ken Herring conducted a vote and the change passed with a unanimous vote. Upon the change in language, Mr. Herring then asked for a vote on the entire amendment. The group voted unanimously to approve the amendment.

Consolidation of Small Rural Water Systems

Ms. Janis Nolan from the United States Department of Agriculture (hereafter, USDA) introduced a study performed 2000 in conjunction with the Mississippi Rural Water Association to determine what would entice smaller water systems to merge with other systems. She explained that not all mergers or consolidations have to involve adjacent systems joining physically. The study contains case studies of different mergers by water systems.

Ms. Nolan commented that rural water systems are looking for grants of up to \$500,000 to merge and the grant money is less and less each year. She proposed the possibility of an appropriation from Congress to help the funding of these grants. Also, there would have to be a waiver of certain federal regulations to allow for the appropriation.

One of the main issues that arose during the information gathering of the study was identity issues of the water associations. The associations did not like taking their names off the water tanks and other hardware.

Senator Lee suggested that one hurdle of merging water systems was mismanagement by some of the water association boards. If the boards mismanage the association, other associations do not want to merge and take on the liabilities. Conversely, Mr. Buddy Hand commented that there are only a very few mismanaged associations. He added that only five percent of water associations are in trouble according to MDH.

Mr. Jim Herring raised the issue of what happens when a city wants a piece of a water association, but does not want the entire association. He continued to inform the group of the requirements for mergers under the Nonprofit Act. Mr. Herring explained that for a merger to take place, a vote from both boards involved with the merger was required along with a two-thirds vote by the membership attending a special meeting or annual meeting. Furthermore, the merger must be approved by the Public Service Commission.

At this point, a motion was made to form a subcommittee to explore the possibility of applying for a federal grant to fund the Demonstration Project. The motion passed unanimously by the group.

Mr. Pratt asked Ms. Nolan if the project has changed since it was implemented eleven years ago. Ms. Nolan responded that grant money was less and less each year. Also, she explained the problem of when one water system receives money to merge the other merging system wants the money. Secretary of State Delbert Hosemann expressed his concern of the reality of receiving the federal funding in this climate. Secretary Hosemann advised the group to look at other options in Mississippi. However, Mr. Harvey stated the Demonstration Project has viable parts the group could use in the future.

Mr. Keith Allen was asked what happens now when there is not any money for mergers. Mr. Allen responded that rules such as the Groundwater Rule force failing systems to merge with other systems. Furthermore, he added that the group should look at how to make the mergers more attractive before the systems fail.

Mr. Jim Herring warned the group to be mindful of certain incentives that would regulate rates of water authorities because under state law there is no regulation of rates of rural water associations.

Review of Current Laws, Conversion, and Financing Alternatives

Mr. Ken Herring began the subcommittee report by opening up a discussion on several amendments provided by the subcommittee. The first amendment was Section 51-4-8. Mr. Jim

Herring commented that if we adopt this amendment and allow a water association to convert to a membership, the public water authority can elect its own board members.

Mr. Harvey asked if the group wanted to give this protection to all water associations or just those which convert to public water authorities. Furthermore, he opined that if the group wanted to give that protection to all water associations, we need to keep the qualified corporation language in the amendment. Mr. Ken Herring then commented that Section 51-41-13 needs to be clarified to include sewer systems.

Secretary Hosemann raised a question about the language of the amendment. He did not understand what the group wanted to accomplish with the “does not have outstanding loans with the State or guaranteed by the State” language. Mr. Harvey explained the language was a loose analogy to the federal protection provided under 1926(b). Mr. Harvey and Secretary Hosemann agreed the language should be taken out because it limits existing municipalities from using eminent domain to take over an area and assume the loan.

Mr. Jim Herring added that he would like to insert “act or chapter” instead of “paragraph” in the amendment to maintain continuity with the act and with the language in Section 77-3-1. Secretary Hosemann suggested that the group dig further into the language.

Mr. Ken Herring concluded the committee reports by stating that it would be a good idea to get Mr. Jim Herring, Mr. Harvey, and Mr. Pratt to review the language of the amendments and present it at the next meeting.

Closing Remarks

Mr. Ken Herring reminded the group the next full meeting would be September 13, 2011 at 10:00 a.m. In other business, Mr. Herring asked group members to sign up for subcommittees to review the Gulf Coast Region Utility Act and the protection afforded to utilities under Section 77-3-21.

Mr. Pratt thanked the group for attending the meeting. At this point, Mr. Jim Herring asked the record to show his congratulations for Secretary Hosemann in receiving eighty-six percent of the vote in his election victory. With no other business, the meeting was adjourned at 11:30 p.m.

EXHIBIT A

Minutes of the Rural Water Association Laws Study Group, Meeting #3
August 16, 2011

Members in Attendance:

1. Keith Allen
2. David Boackle
3. Terry Boyette
4. Jim Elliot
5. Buddy Hand
6. Brett Harvey
7. Jim Herring
8. Ken Herring, Co-Chair
9. Sen. Perry Lee
10. George Lewis
11. Mike McCool
12. Grant Mitchell
13. Patricia McDowell on behalf of Bettye Oliver
14. Quincy Mukoro
15. Janis Nolan on behalf of Bettye Oliver
16. Leslie Royals
17. Bill Rutledge
18. Rep. Joe Warren

Members in Attendance by Telephone:

1. Chris 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. Justin Fitch, Senior Attorney, Division of Policy and Research
4. Brian Bledsoe, Special Counsel
5. Martin Hegwood, Senior Policy Counsel