

Index: ~~2/21~~ ~~2/29~~
2/25
2/7 ✓

MTAS
READING FILE

JANUARY 27-

FEBRUARY 28

1992



Jackson Regional Office
Suite 109
605 Airways Boulevard
Jackson, Tennessee 38301
(901) 423-3710

February 7, 1992

Mayor Jimmy Whittington
Town of Selmer
144 North Second Street
Selmer, Tennessee 38375

Dear Mayor Whittington:

You have asked the question whether the Board of Mayor and Aldermen ^{can} dissolve the Board of Waterworks and Sewerage Commissioners and assume the duties of operating the water, sewer, and gas utilities. The answer is a qualified "yes".

Your Board of Waterworks and Sewerage Commissioners was created in 1934 by Ordinance No. 174 under the authority of Chapter 68 of the Public Acts of 1933 (now T.C.A. §7-35-406). The creation of the Board was mandated by the 1933 law. In 1966, this law was amended to provide that ".....the governing body of any incorporated city or town may, by proper ordinance, elect to perform the duties required of the boards under this part". This amendment provides the general authority for you to dissolve the Board of Waterworks and Sewerage Commissioners and to assume their responsibilities.

However, a 1967 Tennessee Supreme Court Case [State ex. rel. Barr v. Selmer, 220 Tenn.304, 417 S.W.2nd 532 (1967)] limited, under certain circumstances, the authority to eliminate the Board. In this case, the Court ruled that although the general authority to eliminate the Board was valid, it could not be exercised if there were any outstanding utility bonds which, in the ordinance or resolution authorizing their issuance had a provision that the utility would be operated by a Board of Waterworks and Sewerage Commissioners. To allow the Board to be dissolved under these circumstances would have violated the agreement between the Town and the bond holders which was entered into at the time the bonds were issued. The Court also determined that the Town could have taken over and operated the water and sewer utilities since the only utility affected by such a bond resolution, at that time, was the gas utility.

So, the situation is that you do have the authority to dissolve the Board of Waterworks and Sewerage Commissions if you do not have any outstanding utility bonds that provide in their authorizing documents, that the specific utility for which the bonds were issued must be operated by the Board of Waterworks and Sewerage Commissioners. Since I am not familiar with your current outstanding utility bond issues and since I am not familiar with the authorizing documents for those bonds, I am unable to state if a situation exists that would limit your authority to do away with the Board. I can only suggest that you carefully

Mayor Whittington
February 7, 1992
Page 2

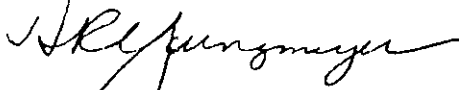
examine all bond issue documentation to determine if such a limitation applies and to which utilities it would apply before you make any attempts to eliminate the Board.

Depending upon your particular circumstances, it might be possible to take over the control and operation of one or two of your utilities even though you might not be able to take over all three of them. Such divided authority would not appear to be feasible from either an operational or economic standpoint.

If I may provide any additional information, please do not hesitate to contact me.

Yours truly,

MUNICIPAL TECHNICAL ADVISORY SERVICE

A handwritten signature in dark ink, appearing to read 'H. R. Yungmeyer', written over a horizontal line.

H. R. Yungmeyer
Municipal Consultant

HRV/bym