

A special meeting of the Beverly Town Council was called Monday, March 25, 2019, at 6:30 pm in the council chambers of the Beverly Town Hall. The special meeting was called to order by Mayor Cindy Karelis. Those present were Recorder Barbara Smith, council members Connie Pingley, Matt Lewis, Becky Weese and Rodney Cooper. Tena Pritt was absent.

Visitors included Kenny Weese, Donnie Pritt, Dave Harper, Jarrod Phillips, Brookes Binn – Inter-Mountain, Troy Ware, Debbie Stalnaker and Dave Simmons.

UTILITY BOARD STATUS

Mayor Karelis informed all present that she had received a memorandum from John Stump, Steptoe & Johnson, earlier today and council now has his recommendation which follows, "We recommend that, if the Town desires to enforce a residency requirement for the Water Board and the Sewer Board, the respective ordinances should be modified to remove any ambiguity as to such requirement." (Copy of memorandum from Mr. Stump included in minutes.) Mayor Karelis stated that Mr. Chenoweth's interpretation was correct, but we now know council can amend and change the resident status of our ordinance. Mayor Karelis stated that we are "good to go." A motion was made by Mrs. Pingley to have the respective ordinances amended to show that persons may serve on the boards as long as they are on the town's utility services. The motion was seconded by Mr. Cooper. All in favor. Mr. Chenoweth will be contacted to write the new modification.

REQUEST FOR REIMBURSEMENT – ARMSTRONG

Discussion was tabled on the request for reimbursement to Armstrong since the water board has to decide what to do. The Mayor is concerned because the town has been given three different costs to repay.

2019-2010 BUDGET REVIEW

Town clerk, Robin Wilson, went over the budget and explained everything to members of council in regards to the 18/19 year budget and the 19/20 year budget. A motion was made by Mrs. Weese to move the 4-H Camp \$1000 and put it in the Fairs and Festival Account. Motion seconded by Mr. Lewis. All in favor.

2019-2019 BUDGET REVISION

A motion was made by Mrs. Pingley to remove \$15,000 from the Main Street Program and to move it to the City Attorney account; and also move \$12,000 from the Public Grounds Account and put \$10,000 in the Enforcement/IPMC account and \$2,000 in the Elections Account. Motion seconded by Mr. Lewis with all in favor.

APPOINT COUNCILPERSON

An email resignation was received from council member, Tena Pritt. Mrs. Pingley feels a letter with her signature should be received before council appoints anyone to her seat. Bob Connors was mentioned as a replacement. Deborah Stalnaker was present and said she would serve, Katie Whitaker's name was also mentioned. Appointment was tabled till a written signature is received from Mrs. Pritt. Susan Economou from the WV Municipal League said the seat needs filled for the people to have full representation.

ONTRAC FUNDING REQUEST

Joan Pitts from ONTRAC had requested by letter at our last meeting \$800.00 to purchase the annual Christmas tree and flowers for summer. Mrs. Weese made a motion to keep funding as it has been, they present receipts and the town reimburses ONTRAC then. Motion seconded by Mr. Lewis with all in favor.

AMBASSADOR CHARACTER PROGRAM

No interest was shown in the Ambassador Character Program but a suggestion was made that if we were to fund anything for Beverly School that the Book Mobil be considered.

UPDATES

There will be no meeting April 8th; the regular meeting will be on Tuesday, April 16th.

The Mayor reported that the Marstiller house has been removed, the grounds straighten up and the grass sowed.

The DOH is checking into the rubbish on the back of the Barnes property.

Thelma Lewis has been sent a letter regarding the unlicensed automobiles on her property.

The Day Care still has not required business licenses or cleaned up their property.

Dollar Store is looking better in the front; the fire marshal has paid a visit.

A motion was made by Mrs. Pingley to adjourn, seconded by Mrs. Weese. Meeting adjourned at 7:32.


MAYOR: CINDY KARELIS


RECORDER: BARBARA SMITH



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MEMORANDUM

To: The Town of Beverly
c/o The Honorable Cynthia Kareli, Mayor

From: John C. Stump
Stepto & Johnson PLLC

Date: March 25, 2019

Subject: Are Members of the Water Board and Sanitary Board of the Town of Beverly required to be Resident of the Town?

The purpose of this memorandum is to address the following question regarding the composition of the Water Board and the Sanitary Board of the Town of Beverly:

May individuals other than residents of the Town of Beverly serve on the Water Board or the Sanitary Board?

In order to consider this question, an analysis of the statutory authorization of the Town of Beverly Water Board and Sanitary Board is required.

UTILITY STATUTES

The Town operates a potable water storage and distribution system (the "Water System") pursuant to West Virginia Code § 8-19 *et seq.* (the "Municipal Water Statute") and a sanitary sewerage collection and treatment system (the "Sewer System") pursuant to West Virginia Code § 16-13 *et seq.* (the "Municipal Sewer Statute"). Accordingly, the Water System and the Sewer System operate as separate "enterprise funds" of the Town and are governed by their respective statutes.

1. Municipal Water Statute.

West Virginia Code § 8-19-19 provides that any municipality is empowered and authorized to: "acquire, construct, establish, extend, equip, repair maintain and operate a waterworks system . . . and to collect the revenues therefrom for the services rendered thereby, through the supervision and control of a committee, by whatever name called, composed of all or a portion of the governing body, or of a board or commission appointed by such governing body, and if such alternative is

followed, said committee, board or commission shall have and be limited to all the powers, authority and duties granted to and imposed upon a board as provided in article sixteen [§§ 8-16-1 et seq.] of this chapter.” West Virginia Code § 8-16-1 *et seq.* (the “Water Board Statute”) states that “[a]ny such committee, board or commission shall consist of the number of members fixed in the ordinance or ordinances creating the same, and the manner and mode of the selection and appointment of such member of any such board or commission shall be stated in such ordinance or ordinances.”

The Council of the Town of Beverly enacted an ordinance on April 12, 1979, (the “Water Board Ordinance”) creating the Water Board with the responsibility for the supervision and control of the “construction, administration, operation and maintenance” of the Water System. The Water Board Ordinance provides that the Water Board shall be comprised of three members, including the mayor who shall serve as Chairperson, and two persons appointed by Common Council. The Water Board Ordinance further provides that “during any construction period, [one board member] must be a registered professional engineer, and the engineer member of the board need not be a resident of the Town. After construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer.” The Water Board Ordinance states that “the appointees [to the Water Board] shall serve their terms subject to the will and pleasure of the common council.”

The following points are important to the analysis of the issue presented:

- a. State law is silent as to whether or not members of the Water Board must be residents of the Town.
- b. The language in the Water Board Ordinance related to the requirement of a “registered professional engineer” is not found in the Municipal Water Statute or the Water Board Statute.
- c. The Common Council of Beverly is authorized, pursuant to the Water Board Statute, to determine in the Water Board Ordinance “. . . the manner and mode of the selection and appointment of [any] member of any such board or commission. . .”

2. Municipal Sewer Statute.

West Virginia Code § 16-13-18(a) specifically requires that the “custody, administration, operation and maintenance” of any municipal sanitary sewer system shall be under the supervision and control of a sanitary board. The sanitary board shall be composed of the mayor or city manager of the municipality, and two persons appointed by the governing body, “provided, that in the event of an acquisition or merger of an existing works, the governing body may increase the membership to a maximum of four members in addition to the mayor or city manager.” *Id.* at (b). The governing body is specifically authorized, subject to the requirements of the Municipal Sewer Statute, to “provide by ordinance the organization of the board.” *Id.* at (a). Finally, the Municipal Sewer Statute provides that “[d]uring the construction period, one of the members must be a

registered professional engineer, except that if a registered professional engineer is under contract for the project, the membership of the board is not required to include a registered professional engineer. The engineer member of the Board need not be a resident of the municipality.”

The Municipal Sewer Act discusses the situations in which the Board must utilize the services of a licensed professional engineer who is not a member of the Board. “Before any municipality shall construct or acquire any works under this article, the governing body shall upon petition of the board, enact an ordinance or ordinances which shall: (a) Set forth a brief and general description the works and, if the same are to be constructed, a reference to the preliminary report which shall heretofore have been prepared by and filed by an engineer chosen by the board; (b) set forth the cost thereof estimated by the engineer chose as aforesaid. . .” West Virginia Code § 16-13-5. Additionally, “[n]o contract or agreement with any contractor or contractors for labor and/or material, exceeding in amount \$25,000, shall be made without advertising for bids, which bids shall be publicly opened. . .” West Virginia Code § 16-13-3.

The Council of the Town of Beverly enacted an ordinance on April 12, 1979 (the “Sanitary Board Ordinance”), creating the Sanitary Board with the responsibility for the supervision and control of the “custody, administration, operation and maintenance” of the Sewer System. The Sanitary Board Ordinance provides that the Sanitary Board shall be comprised of three members, including the mayor who shall serve as Chairperson, and two persons appointed by Common Council. The Sanitary Board Ordinance further provides that “during any construction period, [one board member] must be a registered professional engineer, and the engineer member of the board need not be a resident of the Town. After construction of the plant has been completed, the engineer member may be succeeded by a person not an engineer.” The Sanitary Board Ordinance states that “the appointees [to the Sanitary Board] shall serve their terms subject to the will and pleasure of the common council.”

The following points are important to the analysis of the issue presented:

- a. State law is silent as to whether or not members of the Sanitary Board must be residents of the Town.
- b. The language in the Sewer Board Ordinance related to the requirement of a “registered professional engineer” is different from the language in the Municipal Sewer Statute (as explained below).
- c. The Municipal Sewer Statute contains express provisions related to the composition of the Sanitary Board, including granting authority to the Common Council of the Town to expand the size of the Sanitary Board to four members, in addition to the Mayor, in the event of an “acquisition or merger of an existing works.”
- d. The Municipal Sewer Statute states that “[t]he governing body shall provide by ordinance the organization of the board. . .”

LEGAL ANALYSIS

A. Water Board.

State law does not require that members of the Water Board be residents of the Town. The existing Water Board Ordinance can be read to infer that Town residency is a requirement in light of the language addressing the requirement for a licensed professional engineer on the Water Board, and the replacement therefore need not be a resident of the Town. This requirement is not found in the Municipal Water Statute or the Water Board Act. The Water Board Act provides the City Council with the authorization to determine the composition of members of the Water Board through the Water Board Ordinance.

B. Sanitary Board.

State law is silent as to whether members of the Sanitary Board must be residents of the Town, except that that the Mayor, as chairperson, is required to be a resident of the Town to be elected Mayor.

The Municipal Sewer Statute does, however, contain the express requirement that “[d]uring the construction period, one of the members must be a registered professional engineer, except that if a registered professional engineer is under contract for the project, the membership of the board is not required to include a registered professional engineer. The engineer member of the Board need not be a resident of the municipality.” Id. at (c). This language is different from the requirement contained in the Water Board Ordinance and the Sanitary Board Ordinance; specifically the Municipal Sewer Statute requires a licensed professional engineer on the Sanitary Board only when a licensed professional engineer is not under contract for a project. The language in the Water Board Ordinance and the Sanitary Board Ordinance reflects the PRIOR language of the Municipal Sewer Statute; which was amended effective March 12, 2015.

While an inference of a residency requirement for members of the Sanitary Board can be made from the language in the Sanitary Board Ordinance related to the residency of a board member licensed professional engineer, the revised language in the Municipal Sewer Statute, when read in conjunction with the numerous situations in which the Municipal Sewer Statute mandates that a licensed professional engineer will be under contract with the Board, significantly diminishes this argument. For example, a licensed engineer must be under contract to contribute to the ordinance required to be enacted prior to “any works” being constructed or acquired. In reality, the time period in which a board member would be required to be a licensed professional engineer due to a construction project was significantly limited as a result of the statutory change, reducing the persuasiveness of the argument. The provision will have little applicability.

More persuasively, the Municipal Sewer Statute was recently amended to specifically provide that, "in the event of any acquisition or merger of an existing works, the governing body may increase the membership [of the Board] to a maximum of four members in addition to the mayor or city manager." As a practical matter, any such "acquisition or merger of an existing works" would be from, or with, an entity outside of the municipality's corporate boundaries (such as a Town acquiring the sanitary sewerage assets of a PSD). The reasonable reading of the legislature's intent is to allow board members to serve on a sanitary board who are not residents of the municipality. No reason exists to expand the size of a sanitary board other than to provide additional representation from the newly acquired or merged area.

CONCLUSION

No case law in West Virginia exists addressing the question of a municipal residency requirement for members of a Water Board or Sewer Board. Accordingly, only statutory interpretation and practical application of the law can be relied upon in responding to the question.

With respect to the Water Board, State law does not require residency inside the Town to serve on the Board. State law does, however, permit the Town to determine, in the Water Board Ordinance, that residency in the Town should be a requirement of serving on the Water Board.

With respect to the Sanitary Board, an argument does exist that, due to the language clarifying that a licensed professional engineer on the board is not required to be a resident, the legislature intended to require residency for board members who are not licensed professional engineers, with the exception of the mayor who must be a resident. We believe, however, that the recent amendments to the statute by the legislature, in particular to allow the expansion of a sanitary board in the event of an "acquisition or merger," are persuasive that such a residency requirement was not and is not required by the legislature. State law does, however, permit the Town to determine, in the Sanitary Board Ordinance, that residency in the Town should be a requirement of serving on the Sanitary Board.

We recommend that, if the Town desires to enforce a residency requirement for the Water Board and the Sewer Board, the respective ordinances should be modified to remove any ambiguity as to such requirement.

RESOLUTION

At a regular session of the municipal council, held March 25, 2019, the following order was made and entered:

SUBJECT: The revision of the Levy Estimate 2018-2019 (Budget) of the Town of Beverly. The following resolution was offered:

RESOLVED: That subject to approval of the State Auditor as ex officio chief inspector of public offices, the municipal council does hereby direct the budget be revised PRIOR TO THE EXPENDITURE OR OBLIGATION OF FUNDS FOR WHICH NO APPROPRIATION OR INSUFFICIENT APPROPRIATION CURRENTLY EXISTS, as shown on budget revision number 01, a copy of which is entered as part of this record.

The adoption of the foregoing resolution having been moved by Becky Weese, and duly seconded by Rodney Cooper the vote thereon was as follows:

<u>Connie Pingley</u>	<u>(Yes)</u> or No
<u>Matt Lewis</u>	<u>(Yes)</u> or No
_____	Yes or No

WHEREUPON, Mayor, Cindy Karelis declared said resolution duly adopted, and it is therefore ADJUDGED and ORDERED that said resolution be, and the same is, hereby adopted as so stated above, and the Recorder, Barbara Smith is authorized to fix his/her signature on the attached "Request for Revision to Approved Budget" to be sent to the State Auditor for approval.