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September 23, 2015

Mr. Michael McCreery
United Counties Council of Illinois
217 East Adams Street, Suite 101
Springfield, IL 62701

**Re: County Water and Sewage Services to Rural Areas
Our File: UNITCC-0601**

Dear Mike:

Issue:

How may a county provide for water and sewage services to rural areas? Can the provision of these services be used as a source of revenue for the county?

Analysis:

Counties have the authority to establish a department of public works by the adoption of a resolution by at least two-thirds of the elected members accepting the provisions of Division 5-15 of the Illinois Counties Code.¹ The county public works department will be managed by a board of public works consisting of 5 members appointed by the chairman of the county board.² Additionally, the county board may employ a superintendent of public works and any other such employees necessary for the administration of the department.³ The county may only exercise authority over waterworks and sewage systems in areas which do not have similar services available.⁴

Under the provisions of Division 5-15, the county is granted broad powers with respect to water supply, drainage, and flood control, including the following with respect to water and

¹ 55 ILCS 5/5-15001.

² 55 ILCS 5/5-15003(B).

³ 55 ILCS 5/5-15003(A).

⁴ 55 ILCS 5/5-15006.

sewage service: the power to produce, pump, and sell water collected and impounded to public or private users and any such authority as may be reasonably necessary in connection with such service; the power to produce and sell any product resulting from the store, treatment, or disposal of waste⁵; the power to control and regulate the disposal of sewage, refuse, and any other waste within the borders of the county; the power to acquire lands for the construction of facilities necessary for the protection of a water supply and other facilities necessary for the supply of such water to public or private users within the county; the power to construct or purchase and operate a waterworks system, a sewage system, or combined waterworks and sewage system; the power to furnish water, sewage, combined water and sewage, or waste management service to individuals, municipal corporations, or other corporations and may impose and collect charges and rates for the furnishing of such services.⁶

A county has the authority to levy an annual tax for the purposes of Division 5-15 by submitting the question of adoption of the tax to the electors of the county at an election.⁷ A majority vote of the electors in favor of the tax is required for approval. Such tax may not exceed a rate of 0.02% and shall be levied and collected in a like manner with the general taxes of the county.

Additionally, a county adopting the provisions of Division 5-15 will have the authority to issue revenue bonds to pay for the costs of the construction, acquisition, or purchase of waterworks, sewage, or waste management facilities.⁸ Such revenue bonds may also be issued to pay the costs of improving or extending such systems and facilities. Funds may also be used for the establishment of reserves to secure the revenue bonds issued. These revenue bonds will be payable only from the income and revenue derived from the operation of the facilities. Income and revenue from the operation of the facilities may only be used to pay the cost of its operation and maintenance, to pay principal and interest on revenue bonds, and to maintain a sinking fund for the payment of bonds or the extension or improvement of the county waterworks, sewage, or waste management facilities.⁹

Conclusion:

A county may create a department of public works to provide for water and sewage services pursuant to Division 5-15 of the Illinois Counties Code. Such department of public works may provide water and sewage services to rural areas so long as the area is not already

⁵ Profits from the sale of such water by the county may only be used for the extension and improvement of the water works system. 55 ILCS 5/5-15009.

⁶ A county which imposes rates and charges for the use of its waterworks, sewage, or waste management facilities, may charge such rates in a sufficient amount to cover the cost and maintenance of the systems, to cover principal and interest of revenue bonds issued pursuant to Division 5-15, and to maintain a sinking fund for the payment of bonds or the extension or improvement of the county waterworks, sewage, or waste management facilities. 55 ILCS 5/5-15020.

⁷ 55 ILCS 5/5-15004.

⁸ 55 ILCS 5/5-15017.

⁹ 55 ILCS 5/5-15021.


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receiving similar services. The county and the department of public works will have only the authority as proscribed in Division 5-15. The county may collect revenue from the provision of water and sewage services; however, such revenue may only be used to cover the cost and maintenance of the systems, to cover principal and interest of revenue bonds issued pursuant to Division 5-15, and to maintain a sinking fund for the payment of bonds or the extension or improvement of the county waterworks, sewage, or waste management facilities.

Sincerely,

GIFFIN, WINNING, COHEN
& BODEWES, P.C.


Herman G. Bodewes


Steven A. Milburn

HGB:SAM/tem

S:/SharedCaseFiles/UNITEDCC-0601/Correspondence/OpReWater&SewageServices-09-23-15

Disclaimer: This opinion was prepared by Giffin, Winning, Cohen & Bodewes, P.C. at the request of UCCI and is to be used solely by UCCI and its members. The State's Attorney is the attorney for the County. Legal advice, if requested, should be sought from the State's Attorney.