

County of Kane

KENNETH SHEPRO
Special Assistant State's Attorney
County Board Attorney

OFFICE OF COUNTY BOARD

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RECEIVED

AUG 6 2009
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July 29, 2009

Ms. Dawn Thompson
Chicago Metropolitan Agency for Planning
233 South Wacker Drive
Suite 800, Sear Tower
Chicago, Illinois 60606

RE: CMAP Water Quality Review
Number 09-WQ-005
Grand Prairie Sanitary District

Dear Ms. Thompson:

I am writing as a Special Assistant State's Attorney for Kane County to follow up on our telephone conversation with you, Kane County Development Executive Director, Phil Bus, and the undersigned, regarding Kane County's concerns relative to the authority of the Grand Prairie Sanitary District to file the captioned application.

As you know, Kane County has raised concerns relative to the initial authority of the Grand Prairie Sanitary District (the "District") to file its application, the absence of proper appointment of the initial Board of Trustees and the purported ratification by the newly appointed Board of prior actions of the District.

I am enclosing a copy of a memorandum from the Kane County State's Attorney's office in which we conclude:

- (1) That the County Board Chairman had the lawful authority to appoint the District Board of Trustees even after the passage of 60 days following the formation of the District; and
- (2) That the current Board has the lawful authority to ratify the prior Acts of a prior Board of Trustees that was not properly appointed.

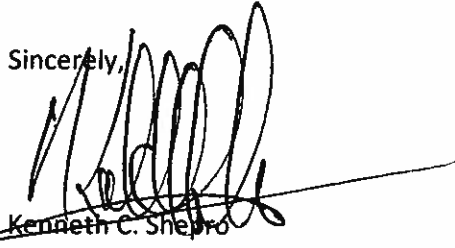
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We believe that in light of the appointment by the Chairman of the Kane County Board of a new Board of Trustees for the Grand Prairie Sanitary District on June 9, 2009 with the advise and consent of the Kane County Board, the subsequent action by the newly constituted Board of Trustees of the District to ratify the acts of the District staff and prior Board, as well as the State's Attorney's opinion enclosed, that the concerns relative to the authority of the District to proceed with its proposed Water Quality Amendment as set forth in Executive Director Bus' letter to Executive Director Randy Blankenhorn of June 10, 2009 have been fully and satisfactorily addressed. Accordingly, Kane County withdraws its prior request to CMAP for deferral of consideration of Application 09-WQ-005 by the Wastewater Committee.

Please feel free to contact me, if you have additional questions on this issue.

Sincerely,



Kenneth C. Shebro

Special Assistant State's Attorney

cc: Karen McConnaughay, Chairman, Kane County Board
Cathy Hurlbut, Esquire, Chairman, Kane County Development Committee
Priscilla White, Trustee, GPSD
Timothy White, Trustee GPSD
Evelyn White, Trustee, GPSD
Peter Brennan, Settlements of LaFox
Rich Guerard, Esquire, Settlements of LaFox
Katherine Moran, Esquire, Chief, Civil Division, Kane County State's Attorney
Phil Bus, Executive Director, Kane County Development Department
Victor P. Filippini, Jr., Esquire, Holland & Knight

Office of the Kane County State's Attorney



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State's Attorney

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(630) 232-3500

DATE: JULY 15, 2009
TO: COUNTY BOARD CHAIRMAN KAREN MCCONNAUGHAY
FROM: ASSISTANT STATE'S ATTORNEY AMY P. ENGERMAN
ASSISTANT STATE'S ATTORNEY JOSEPH F. LULVES
CC: ASSISTANT STATE'S ATTORNEY KEN SHEPRO
RE: GRAND PRAIRIE SANITARY DISTRICT INQUIRY

Inquiry 1: Did the Kane County Board Chairman, with the advice and consent of the Kane County Board, have the authority to appoint the initial board of trustees of the Grand Prairie Sanitary District, after the passage of 60 days following the formation of the district.

Yes. The letter raising this issue, from David A. Patzelt, fails to note the Sanitary District Act of 1936 section authorizing the appointment of trustees, contains a general savings clause providing "Whenever a vacancy in an appointive board occurs.....for any other reason, the appointing authority in the county in which such sanitary district is situated may fill such vacancy by appointment." 70 ILCS 2805/3(e). Therefore, as the initial board positions were vacant, the initial appointing authority remained the county board. We see no authority, and none is cited, for Mr. Patzelt's assertions that a vacancy in the offices, or a failure to file a document with the Illinois Secretary of State, automatically caused the dissolution of the district.

Inquiry 2: May a properly appointed board of trustees ratify actions taken by a board of trustees not properly appointed.

Yes. Effectiveness of ratification depends on the nature of the act taken, and being ratified: If the act being ratified was an act within the authority of the ratifying official or board, it may be ratified. *e.g. City of Shawneetown v. Baker, 85 Ill. 563, 565-566 (1877)* (An undertaking may be ratified if it is not beyond the powers of the municipal corporation). On the facts presented, there is no allegation that any of the actions ratified by the appointed board of trustees are ultra vires, therefore those actions may be properly ratified.