



# DuPage Water Commission

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**NOTICE IS HEREBY GIVEN THAT THE RESCHEDULED DECEMBER 2003 ADMINISTRATION COMMITTEE MEETING OF THE DU PAGE WATER COMMISSION WILL BE HELD AT 11:00 A.M. ON THURSDAY, DECEMBER 11, 2003, AT ITS OFFICES LISTED BELOW. THE AGENDA FOR THE RESCHEDULED DECEMBER 2003 REGULAR COMMITTEE MEETING IS AS FOLLOWS:**

## AGENDA

**ADMINISTRATION COMMITTEE  
THURSDAY, DECEMBER 11, 2003  
11:00 A.M.**

**600 EAST BUTTERFIELD ROAD  
ELMHURST, IL 60126**

## COMMITTEE MEMBERS

R. Thorn, Chair  
R. Benson  
L. Hartwig  
D. Zeilenga

- I. Roll Call
- II. Approval of Minutes
  - a. Regular Committee Meeting of November 13, 2003
- III. Discussion of Teleconferencing at Commission Meetings –  
Discussion of Legal Issues
- IV. Consideration of Appointment of Commission Ethics Officer
- V. Review of RFP for Services of a General Counsel
- VI. Review of Executive Search Proposals
- VII. Other

Board/Agendas/Administration/ADM0312.DOC

All visitors must present a valid drivers license or other government-issued photo identification, sign in at the reception area and wear a visitor badge while at the DuPage Pumping Station.

**MINUTES OF A MEETING OF THE  
ADMINISTRATION COMMITTEE  
OF THE DU PAGE WATER COMMISSION  
HELD ON NOVEMBER 13, 2003**

The meeting was called to order at 7:00 P.M. at the Commission's office located at 600 East Butterfield Road, Elmhurst, Illinois.

Committee members in attendance: L. Hartwig, R. Thorn and D. Zeilenga

Commissioner Hartwig moved to approve the Minutes of the October 8, 2003 Administration Committee. Seconded by Commissioner Zeilenga and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

Commissioner Zeilenga moved to approve the Executive Session Minutes of the October 8, 2003 Administration Committee. Seconded by Commissioner Hartwig and unanimously approved by a Voice Vote.

All voted aye. Motion carried.

The Administration Committee discussed the creation of a staff attorney position and the benefits of such a position. The Committee also discussed the appointment of an Acting General Manager and the soliciting of a search firm for the position of General Manager.

Commissioner Zeilenga moved to adjourn the meeting at 7:25 P.M. Seconded by Commissioner Thorn and unanimously approved by a Voice Vote.

All voted aye. Motion carried.



# DuPage Water Commission

## MEMORANDUM

TO: Chairman & Commissioners  
FROM: General Manager  
DATE: December 5, 2003  
SUBJECT: Telephonic Meeting Participation

### **I. Telephonic Participation in Public Meetings.**

According to the Commission's legal counsel, Commissioners may participate in Commission meetings by telephone conference under the Open Meetings Act so long as the call is conducted in a manner that complies with the Act's other requirements:

There is nothing within the Open Meetings Act which specifically prohibits conducting a meeting by telephone conference or requires members of a public body to be in each other's physical presence to establish a quorum. *People ex rel. Graf v. Village of Lake Bluff*, 321 Ill. App. 3d 897, 909 (2d Dist. 2001), *citing Freedom Oil Co. v. Illinois Pollution Control Bd.*, 275 Ill. App. 3d 508, 515 (4<sup>th</sup> Dist. 1995).

Moreover, the "absence of a rule [allowing telephonic participation] does not render [a public body's] authority to conduct meetings by telephone conference invalid." *Freedom Oil Co. v. Illinois Pollution Control Bd.*, 275 Ill. App. 3d at 517. However, the *Freedom Oil* court suggested that if a public body intends to regularly conduct meetings by telephonic conference, the "better practice would dictate it should have rules in place for the procedures to be followed." *Freedom Oil Co. v. Illinois Pollution Control Bd.*, 275 Ill. App. 3d at 518.

In keeping with the "better practice" suggestion of the *Freedom Oil* court, the Commission should consider adopting a policy regulating telephonic participation in its public meetings. If the Commission decides to adopt a policy allowing telephonic participation, it is essential that the Commissioner participating telephonically be able to hear the substance of the meeting, and that those in attendance at the meeting be able to hear the telephonically participating Commissioner. Other than that, the Commission is free to determine its own rules concerning telephonic participation.

Thus, in consultation with legal counsel, we have prepared a "decision tree" isolating the decisions the Commission will need to make in considering whether to adopt a policy prohibiting, or setting limitations on, telephonic participation in Commission meetings.

## **II. Considerations for the Commission in Formulating a Telephonic Meeting Participation Policy.**

1. *Should telephonic participation in meetings be allowed?* The Commission may allow or prohibit telephonic participation. Senate Bill 699, if the Governor's amendatory veto had been overridden, would have required public bodies to allow telephonic participation in meetings. If the Governor's amendatory veto had been accepted by the General Assembly, the determination of whether to allow telephonic participation in meetings would have been left to the discretion of the public body.

2. *If telephonic participation is allowed, should Commissioners participating by telephone be counted in determining whether a quorum is present at the meeting?* The state agencies that have allowed telephonic participation by rule count telephonic participators in their meeting quorum. In contrast, several municipalities have adopted regulations providing that telephonic participators are not counted toward a quorum and Senate Bill 699, if adopted, would not have counted members participating by telephone for quorum purposes in connection with bond issuances or public hearings.

3. *If telephonic participation is allowed, should the allowance exclude certain types of meetings or should Commissioners participating by telephone have limited voting rights?* If Senate Bill 699 had been enacted, members of public bodies participating in a meeting by telephonic means would not be considered for purposes of determining a quorum or voting in connection with public hearings and bond issuances. In addition, if the Governor's amendatory veto to Senate Bill 699 had been accepted by the General Assembly, telephonic participation at all special and emergency meetings would have been prohibited.

4. *If telephonic participation is allowed, should Commissioners be allowed to participate telephonically whenever they want?* The Illinois agencies that allow telephonic participation do not place conditions on when board members may participate by telephone. However, several municipalities do place restrictions on participation: Beyond the official's control; personal illness or disability; personal employment purposes; official business; and/or family or other emergencies. In addition, distance restrictions have been imposed, such as 150 miles from the meeting place or, under SB if it had been adopted, absence from the territorial limits of the public body).

5. *If telephonic participation is allowed, should the Commission require advance notice of telephonic participation?* Several municipalities require, and Senate Bill 699 would have required, telephonic participants to provide 48 hours notice.

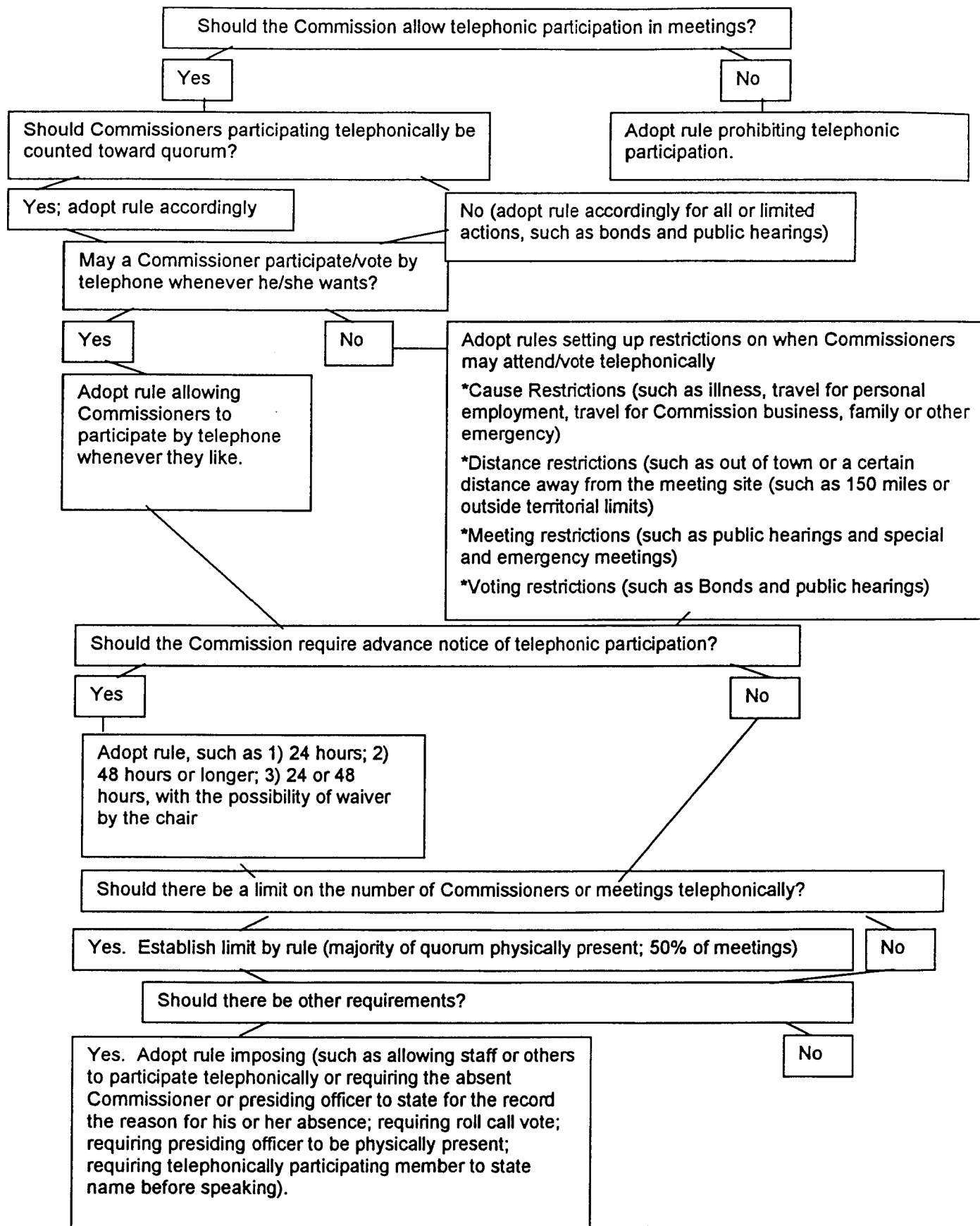
6. *If telephonic participation is allowed, should there be a limit on the number of Commissioners allowed to participate telephonically?* Clarendon Hills allows no more than two Commissioners to participate telephonically in any meeting. Senate Bill 699, if

adopted, would have required that a *majority of a quorum* be physically present at the meeting.

7. *If telephonic participation is allowed, should there be a limit on the number of meetings a Commissioner is allowed to participate in telephonically?* Senate Bill 699 would have limited Commissioners to participating in meetings telephonically in no more than 50% of the annual meetings of the Commission unless a physician's certification was provided.

8. *If telephonic participation is allowed, should miscellaneous restrictions be imposed.* Several municipalities require that if any person is participating telephonically in a public meeting, the record must reflect the reason he was unable to attend in person. Other miscellaneous restrictions include: Requiring all votes be taken by roll call when any board member participates telephonically; requiring that another presiding officer (Chair) be designated whenever the officer who would normally preside over a meeting will be participating telephonically; requiring all members participating telephonically to state their name every time they speak; and allowing the corporate authorities to establish rules allowing telephonic or electronic participation by village staff or other individuals. Similarly, Senate Bill 699, if adopted, would have required roll call votes whenever a member was participating by telephone and required all members participating telephonically to state their name every time they speak.

## Telephonic Participation in Commission Meetings





# **DuPage Water Commission**

## **MEMORANDUM**

TO: Administration Committee

FROM: General Manager

DATE: December 5, 2003

SUBJECT: RFP for Legal Services

Please find attached for your consideration a draft RFP for legal services. This could easily be reworked if the Commission chose to retain a General Counsel for specific tasks while reserving other areas for one or more Special Counsels.

I would estimate, particularly with the upcoming holidays, that it will take the Commission 2-3 months in order to conclude this process. Prior to the next meeting, we will provide you with a list of 10 – 15 law firms for consideration of RFP distribution.

cc: Chairman and Commissioners

# Request for Proposals for Legal Services

## **PURPOSE OF REQUEST**

The DuPage Water Commission is seeking proposals from qualified law firms for the provision of legal services

The Commission is a county water commission, body politic and corporate, political subdivision and unit of local government of the State of Illinois (the "State") organized, existing and operating under the Water Commission Act of 1985, 70ILCS 3720/1 *et seq.* (the "Water Commission Act"). The Commission is empowered under the Water Commission Act and Division 135 of Article 11 of the Illinois Municipal Code, 65 ILCS 5/11-135-1 *et seq.* to finance, construct, acquire, and operate a water supply system to serve municipalities in the territory of the Commission and other potential water purchasers. The Commission has independent taxing powers and its territory includes property principally in DuPage County, Illinois, with smaller portions in Cook and Will Counties, Illinois. The Commission is located in northeastern Illinois, west of the City of Chicago. The Commission serves an area of over 300 square miles, encompassing a population of approximately 857,497, based upon the 2000 U.S. Census. The Commission's tax base as of 2002 was \$26,567,127,450, with a market value of approximately \$79,701,382,350.

The Commission initially entered into purchase contracts with 23 DuPage County units of local government. In addition to the Charter Customers, the Commission has entered into purchase contracts with four "Subsequent Customers."

## **QUALIFICATIONS/EXPERIENCE**

In considering your proposal the Commission is particularly interested in your firm's experience in the following areas:

- 1) Please describe your firm's range of experience in large construction projects and specifically your experience in underground construction and its relevance to the DuPage Water Commission. This would include your familiarity with construction contracts, and particularly drafting specifications and general conditions and their defense. This would also include your experience with various insurance coverage issues, the acquisition of real estate and rights of way and the enforcement of payment and performance bonds.
- 2) The Commission is interested in your firm's experience in the area of municipal law, including Chapter 85, the Local Government Statute, and Chapter 24, the Municipal Code. This would include the Water Commission Act of 1985 as recently amended by PA 93-0226, and your overall knowledge of the regulatory environment in the State of Illinois, which includes the State of Illinois water allocation procedures.



- 3) Your firm's utility background would be of particular interest to the Commission with a primary focus on different forms of water purchase and sale contracts, take or pay agreements, and the different pricing and rate structure theories that are used from time to time by the Commission.
- 4) Please describe your firm's experience representing any regional or intergovernmental water agencies or any similar agencies.
- 5) List your firm's experience in the area of project and or public finance and specifically your background in representing issuers of public debt either as owner's counsel, underwriter's counsel or bond counsel.
- 6) Describe your experience in working with and monitoring various legislative activities, which would include your familiarity with the appropriation process, and any lobbying experience your firm may have.
- 7) Please describe your experience in the areas of employment practices, labor relations and personnel related insurance matters.
- 8) Describe your ability and willingness to provide the Commission with any other ancillary legal services that may be required from time to time such as media relations, investigative capabilities, and continuing education seminars and briefings.

### **STAFFING**

- 1) Provide the Commission with some background information regarding one or two principal attorneys that would have responsibility for this engagement with particular emphasis on their background in the above-specified areas. The principal attorney(s) serving the Commission shall be licensed to practice law in Illinois, and should have 15 or more years of experience representing special purpose local government. How would these individuals interface with the Commission and what would be the division of labor between them?
- 2) Please describe your firm's depth of experience and particularly the number of qualified attorneys that routinely practice in the above areas that can be made available to the Commission should the volume of work or unforeseen emergencies require it.
- 3) Provide the Commission with an estimate of the hours that you believe will be needed in order to familiarize your firm with the Commission's history, financial structure, legislative background and general business.

### **FEES**

Please describe your preferred fee arrangement and any alternate arrangements that you might consider. Be specific as to fees that are being proposed and your preferred method of billing. This might include a blended hourly rate of all attorneys involved in Commission work or a monthly or annual retainer for routine legal representation with a separate hourly rate for all "non-routine" work items.

The monthly or annual retainer would be a fixed fee for approximately twelve hours to cover attendance at the Commission's monthly meeting and all other routine matters such as review of minutes, ordinances, resolutions, etc.

### **MALPRACTICE INSURANCE**

Please submit verification that any and all attorneys in your employ that may represent the Commission are covered by professional malpractice insurance and provide the Commission with certificates of insurance verifying that the firm carries the necessary levels of errors and omissions insurance coverage.

### **CONFLICTS**

Identify any known or potential conflicts of interest with existing or possible future customers of the Commission that may arise from any undertaking on your part to represent the Commission.

### **EVALUATION OF PROPOSALS**

Any and all proposals submitted will be evaluated on the basis of:

- 1) The experience of the attorneys that would be primarily responsible for representing the Commission and the compatibility of that experience with the Commissions overall mission;
- 2) The Commissions assessment of the firms overall record in the area of client satisfaction;
- 3) The absence of serious existing or potential conflicts of interest; and finally
- 4) Fees and expenses.

### **SUMMARY**

Each of the proposals submitted will be reviewed by a Special Select Committee of the Board of Commissioners of the DuPage Water Commission. On the basis of that review, several firms will be invited to interview with the Commission on January \_\_\_\_, 2004. The final selection will be made by the full Board of Commissioners based upon a recommendation from the Select Committee.

Please feel free to provide any additional information that you may consider relevant to this process.