

KIMBERLY HEIGHTS SANITARY DISTRICT

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Elizabeth M. Murphy, Secretary
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549-1090

SUBJECT: SEC Ruling, File Number S7-45-10

We are writing to comment on the exclusions from the definition of "municipal advisor" as proposed in Release 34-63576. More specifically, we wish to comment on the deliberate inclusion of appointed board members to be considered as Municipal Financial Advisors under the proposed ruling. We strongly disagree with the SEC's view that "appointed members, unlike elected officials and elected *ex-officio* members, are not directly accountable for their performance to the citizens of the municipal entity." In the case of the Kimberly Heights Sanitary District, and many small and special purpose districts, the SEC's assumption could not be farther from the truth.

The Kimberly Heights Sanitary District provides for the maintenance of a sanitary sewer system that collects sewerage from approximately 230 customers in a predominantly residential subdivision encompassing approximately 160 acres and delivers it to another sanitary district (Metropolitan Water Reclamation District of Greater Chicago) for treatment and disposal. The residential population is estimated at approximately 700 citizens.

The District was created by referendum vote following Illinois State Statutes. Under the Illinois State Statutes, the governing board for the District consists of three trustees that are appointed by the County Board President where the district is located (Cook County, Illinois). Appointed trustees is the default organizational structure of such districts under the statutory guidance. The statutes make provision for the possibility of holding a referendum to cause the three trustee positions to be elected instead of appointed, but as noted, the default is that the trustees are approved by appointment of the County governing authority.

The District and its Trustees have the authority to levy a property tax, establish fees for service, and to assess fines as part of their management and administration of the District's affairs. In their capacity as Trustees for the Kimberly Heights Sanitary District board, these appointed trustees/board members perform exactly the same functions of administration of the District's financial and operational affairs that would be conducted if the positions were elected. Regardless of appointment or election, the Trustees must be residents of the District, which places them in a position of having a greater vested interest in the proper management and administration of the District's affairs. Furthermore, they are directly and equally "accountable for their performance to the citizens of the municipal entity" without regard to appointment or election. As such, there are **absolutely no differences between an elected trustee and an appointed trustee.** Yet, the SEC has interpreted that there is a difference, when in fact, there is not.

The proposed rule would impose an unnecessary and burdensome duty to permanently register all of the District's Trustees with the SEC as "Municipal Advisors" and each Trustee to be individually held

accountable for disclosing, among other things, personal information and employment history, be duty bound to certain record keeping requirements, continuing education requirements, and to be held liable for civil and or criminal matters that would be beyond the scope of knowledge for such board members. In addition, the registration requirement would add a significant and unnecessary financial burden upon our trustees, the District, and the citizens to which the Board is ultimately accountable. This added financial burden does not in any way enhance or "add value" to the operation of small municipal districts such as our own.

As occurs with any administrative board (municipal or otherwise), from time to time, the District is faced with the resignation of a Trustee due to health, changing commitments (work or personal), or moving outside of the District's boundaries. It has long been a challenge to find individuals willing and able to "volunteer" to serve as a Trustee. As noted earlier, our District serves only a small geographical area and population which places additional limits and constraints on the pool of available candidates to fill a vacancy when it occurs. Serving as a Trustee for the Kimberly Heights Sanitary District (and many other similarly small municipal entities) is a largely thankless job in and of itself. In the case of the Kimberly Heights Sanitary District, the only minor benefit is a nominal compensation paid on a per meeting basis. With annual compensation normally in the range of \$200, nobody is "in it for the money."

Thankfully, our current Board is comprised of individuals with a genuine interest in serving the District's community for the greater good. As an added bonus, two of our current Trustees bring to the table several decades of experience in municipal government and sewerage treatment that have greatly enhanced the operation and administration of the Kimberly Heights Sanitary District as it faces the greatest physical and financial challenges in the District's fifty-one years of existence. This kind of experience is a rare commodity for most small municipal entities and one that such entities do not want to unnecessarily lose under any circumstance, and especially not due to extenuating circumstances such as the proposed SEC registration requirement. The burden and the related liabilities associated with the proposed SEC ruling create just such an extenuating circumstance that puts the Board at great risk for losing good public servants to avoid the onerous registration requirements and related liability. Should the proposed SEC rules be adopted as proposed, it undoubtedly will do severe violence to the District's ability to both retain and recruit individuals to serve as a Trustee.

Our board members do not purport to be, or hold themselves out to be knowledgeable, credentialed financial and legal advisors. They rely upon the advice and counsel of widely recognized experienced, knowledgeable, and credentialed financial and legal professionals engaged by the Board to carry out the financial strategies and transactions associated with loans, bond issues, and other financing mechanisms available and allowable for the District to utilize within the established statutory authority of the State of Illinois.

The SEC's interpretation may apply to a minute sector of governmental entities, but the interpretation is completely incorrect in the vast majority of governmental entities, such as our own, that are administered by appointed members. We respectfully request the SEC to reconsider its proposed position regarding appointed members of a governing body and include them in the exclusion from the proposed ruling along with elected members of a governing body.

Should you have any questions, or require further information, please do not hesitate to contact us.

A handwritten signature in black ink, reading "Brad L. Bettenhausen". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Brad L. Bettenhausen
District Clerk