



COMMONWEALTH OF KENTUCKY
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Dear Calvert City Council
And Marshall County Fiscal Court:

As you know, both entities have expressed a formal desire to dissolve the Riverport Authority. This decision leaves only one issue to resolve and that is the distribution of assets held by the Authority. Currently, those assets consist of a cash balance, one motor vehicle, and a parcel of real property. Because the Riverport Authority has the ability to sell its assets in any way it finds most advantageous (as explained below), we suggest that the County and City request that the Riverport dispose of the assets itself as a part of the dissolution process and then simply recite the fact of disposal in the Dissolution Agreement that the County and City will enter prior to the dissolution. What follows is our recommendation on how to handle each asset.

1. The cash balance. These funds were contributed on an equal basis by the county and the city. Accordingly, split the cash balance between the entities 50/50.
2. The motor vehicle. This item was acquired from the cash contributions made by the county and the city. Our recommendation is to sell on Gov Deals or some other public auction site and split the proceeds from sale 50/50.
3. This only leaves the issue of the real property. Under KRS 65.530(4), it states in pertinent part that "[t]he authority may dispose of any real or personal property, or rights therein, which in the opinion of the authority is not needed for use as riverport or water navigation facilities, or use as industrial parks or sites." It is important to note that we can find no restrictions or stipulations on *how* the authority is to dispose of real property.

Contrast that provision with KRS 67.0802(3) and KRS 82.083(4), which govern the sale and disposition of county and city property, respectively. In the latter two provisions, the legislature has spelled out detailed instructions on the process for disposing of real or personal property. Thus, we can conclude that the absence of such stipulations and restrictions in KRS 65.530(4) represents a deliberate decision to distinguish the abilities of a Riverport Authority from that of a city or county. *See e.g., Keene Corp. v. United States*, 508 U.S. 200 (1993) (concluding that "[w]here Congress includes particular language in one section of a statute but omits it in another . . . , it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion").

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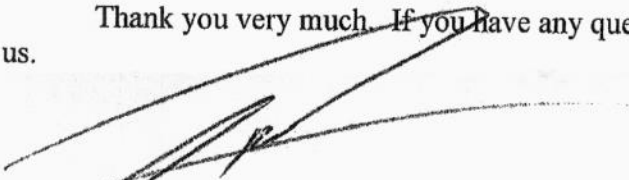
MARSHALL CO. JUDGE'S OFFICE

Accordingly, it is our opinion that the Authority can negotiate privately if it so chooses, provided of course, that the Authority acts in good faith with the singular goal of maximizing the return on a sale of the realty. In other words, if the Authority reasonably believes that selling to an entity through private negotiation would result in more proceeds than selling by public auction or sealed bids, then the Authority can legally choose that option.

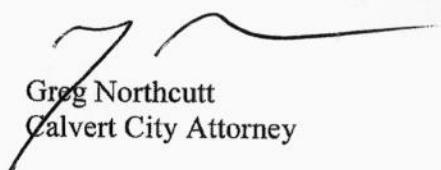
It should be noted that several years ago, the Riverport paid \$9,000 for the purchase of a storage tank to be used as a part of a possible sewer package plant by the Calvert City Water and Sewer Dept. to provide sewer service to the Port if and when an actual port facility was begun. The tank was stored by the City for about 10 years and the anticipated package plant was never needed or constructed. In the meantime, the City extended its municipal sewer service to the port area, thereby rendering a package plant unnecessary. These factors along with the cost to the City of storing and maintaining the tank prompted the City to dispose of the tank a couple of years ago. The City received \$7,500 for the tank. Because the City did not charge the Port for any costs of storage or maintenance, it is our suggestion that the parties simply consider this matter a "wash" and proceed to dispose of and distribute the remaining assets (totaling almost \$2M).

As one final matter, KRS 65.550 requires that the county and the city enter into a written agreement dissolving the Authority. We suggest executing such an agreement once all assets have been liquidated by the Authority, with the agreement specifically accounting for how the assets were liquidated and how the assets will be distributed to each entity.

Thank you very much. If you have any questions, you know how to reach either one of us.



Jason Darnall
Marshall County Attorney



Greg Northcutt
Calvert City Attorney