




## MEMORANDUM

**To:** Mayor Scott & Members of the Board of Directors

**From:** Thomas M. Carpenter   
City Attorney

**Re:** EXTRATERRITORIAL EXTENSION OF UTILITIES: Sewer Service to  
Wrightsville, Arkansas

**Date:** 02 April 2024

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This memorandum addresses issues as to whether the City should agree to the extraterritorial extension of sewer services to the City of Wrightsville, Arkansas (“Wrightsville”). The issue arose because Central Arkansas Water (“CAW”), after taking over the Wrightsville sewer system, sought agreement with WRA to be involved in such services. It appears that one reason CAW sought involvement is because the disconcerting condition of the Wrightsville facilities, and because the State of Arkansas has an interest due to its correctional facility in Wrightsville.

### 1. BASIS FOR THE PROPOSED AGREEMENT BETWEEN CAW AND WRA

Although the Consolidation Agreement, and the Interlocal Agreement which created CAW limits its activities to the provision of water, the proposed agreement between CAW and WRA states that CAW began operations of the Wrightsville sewer system during the winter of 2023. Further, this action was based a *Wastewater System Purchase Agreement* between Wrightsville and CAW that was entered into during the fall of 2023. Although CAW has adopted a resolution to move forward with this transaction, and WRA has adopted a similar resolution, neither party has the unfettered authority to do so. CAW

Memorandum to Mayor Scott & Members of the Board of Directors  
Re: Extraterritorial Extension of Utilities: Sewer Service to Wrightsville, Arkansas  
02 April 2024: Page 2 of 6

cannot act *ultra vires* and agree to take on an obligation that is outside the scope of its granted authority; WRA cannot agree to the extraterritorial extension of sewer services absent the express approval of the Board of Directors of the City of Little Rock (“the City”). As an initial matter, then, the City is being asked to approve an agreement which should never have been entered in the first place, and which should not have been presented to the City *sua sponte* by WRA.

**(a) CAW does have authority to provide sanitary sewer services**

A brief discussion of the creation of CAW is in order. In 2001, the General Assembly passed, and the Governor signed, an act which amended the interlocal cooperation agreement statutes to allow for the creation of waterworks systems. 2001 Ark. Acts 982, *codified as* Ark. Code Ann. § 25-20-301 to 20-324. A specific subsection of the interlocal agreement act was amended in § 2 of Act 982:

- (a) In addition to the legal or administrative entities which may otherwise be legally created under Arkansas statutes, public agencies may create a separate legal entity in the form of a public body corporate and politic pursuant to Ark. Code § 25-20-201 *et seq.* for the purpose of constructing, operating, and maintaining a public library system, *or pursuant to this act for the purpose of constructing, owning, operating, financing, and maintaining a consolidated waterworks system.*

Ark. Code Ann. § 25-20-104 (i) (West 2020) [Emphasis supplied]. At a later date, the law was amended to create a Consolidated Wastewater Systems Act. *See* Ark. Code Ann. §§ 20-25-501 to -525 (West 2020).

Prior to the enactment of Act 982, the cities of Little Rock and North Little Rock approved appropriate municipal legislation to create a joint entity to provide water services. *See* Little Rock, Ark., Ordinance No. 18,410 (January 8, 2001). After enactment of Act

Memorandum to Mayor Scott & Members of the Board of Directors  
Re: Extraterritorial Extension of Utilities: Sewer Service to Wrightsville, Arkansas  
02 April 2024: Page 3 of 6

982, the cities amended this ordinance to create CAW as a “public body corporate and political under the consolidated waterworks authorization act for the purpose of owning and operating a consolidated water system.” Little Rock, Ark., Ordinance No. 18,508 (June 12, 2001).<sup>1</sup> Although the City has extended sewer services extraterritorially – e.g., with Pulaski Countys to carry out part of the joint homeless efforts -- the City has never entered into a consolidation agreement with another municipality as to sewer services.

In fact, until 2009, there was no statutory authority for such an interlocal agreement. *See* 2009 Ark. Acts 1371, *codified as* Ark. Code Ann. §§ 25-20-501 to – 524 (West 2020). Neither Little Rock and North Little Rock, nor CAW and Little Rock, have ever entered into a consolidation agreement to provide extraterritorial sewer services. Hence, CAW did not have the authority to agree with Wrightsville to take over the Wrightsville sewer system.

Without such authority, a proposed contract is void *ab initio*. This means the City cannot sanction an unauthorized CAW-WRA agreement to provide sewer services to Wrightsville. More to the point, absent such an agreement, CAW cannot participate in such an agreement since it exceeds the authority granted it in the interlocation agreement between the City and North Little Rock.

**(b) WRA cannot agree to extraterritorial extensions on its own**

For decades, it has been the policy of the City not to extend sewer services in an extraterritorial fashion without express approval of the Board of Directors. In 1978, the Board expressed this policy in Little Rock, Ark., Resolution No. 5,920 (April 4, 1978). It has adhered to that policy. Further, the policy was successfully defended in litigation against the City. *City of Little Rock v. Chartwell Valley Ltd. Partnership*, 299 Ark. 542,

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<sup>1</sup> The Minutes of the June 12, 2001, meeting of the Little Rock Board of Directors expressly states that the ordinance to amend the consolidation agreement and name the entity Central Arkansas Water *was for operating a consolidated water system*. There is no mention of sewer or wastewater services. *See* MINUTES OF THE LITTLE ROCK BOARD OF DIRECTORS 4 (June 12, 2001)[Emphasis added].

Memorandum to Mayor Scott & Members of the Board of Directors  
Re: Extraterritorial Extension of Utilities: Sewer Service to Wrightsville, Arkansas  
02 April 2024: Page 4 of 6

772 S.W.2d 616 (1989) (“...clearly provided in Act 321 of 1955, *a municipality is not required to extend its services beyond its boundaries.*” [emphasis added]). In *Chartwell Valley*, that plaintiffs also alleged that the failure to extend sewer services constituted an Equal Protection violation of the 14<sup>th</sup> Amendment to the U.S. Constitution. This issue was not addressed by the Arkansas Supreme Court. However, subsequent litigation on this issue in the U.S. District Court resulted in a ruling that the City did not commit any constitutional violations when it did not extend sewer services to a developer.

It is understood that WRA has adopted a resolution of willingness to provide the requested services to Wrightsville. However, that is *not* the prerogative of its Commission. Instead, if the City wishes to extend sewer services extraterritorially, the Commission is to determine if there is sufficient capacity to meet the City’s desire. If not, the inquiry ends. If so, the City makes the policy decision whether to extend services.

In *Chartwell*, it is clear that such a decision is a policy decision. The Arkansas Supreme Court noted that the City “...pursuant to policy, resolutions and ordinances” concluded it would not extend this service. The key point here is that a decision to permit the proposed CAW-WRA contract to go forward is not a matter of simply approving the contract. It is a major shift in policy that requires the amendment or repeal of various City resolutions and ordinances.

One noted concern of the City was the impact of extraterritorial extensions in facilitation of the segregation of the Little Rock School District. In its initial ruling, the U.S. District Court stated:

71. The building of new schools that are racially identifiable, even to the point of being in excess of 90% white, indicates that the school district is ignoring or rejecting the court orders to desegregate. (T. 229, 230; PCSSD X 9)

72. *Through its power of annexation, the City of Little Rock has played an instrumental role in the site selection of new*

Memorandum to Mayor Scott & Members of the Board of Directors  
Re: Extraterritorial Extension of Utilities: Sewer Service to Wrightsville, Arkansas  
02 April 2024: Page 5 of 6

*schools constructed in the Pulaski County Special School District. This has been particularly true as to Otter Creek Elementary School and Fair High School where the City has provided the necessary city services to facilitate the location of these schools in predominately white areas. This will inevitably spur more white movement out of the Little Rock School District to the Pulaski County Special School District. (T. 1204–1208; 838–840)*

*73. Due to the aggressive annexation practice of the City of Little Rock, the population of the unincorporated portions of Pulaski County had decreased between 1970 and 1980 by one-half, while the white population of the Pulaski County Special School District was holding steady or even increasing. (T. 218)*  
At the same time the white population in the North Little Rock School District and the Little Rock School District diminished.  
(T. 218).

*Little Rock School District v. Pulaski Cty. Special Sch. Dist. No. 1, 584 F.Supp. 328, 346-347 (E.D. Ark. 1984) [Emphasis added].* In terms of a dedicated utility, even if there is sufficient capacity to serve a particular area, issues such as the overall impact of that decision on the quality of life in the neighborhood still rests with the involved municipal government. The proposed agreement really does not address this issue.

## **2. PRACTICAL CONSIDERATIONS FOR THE BOARD OF DIRECTORS**

The Wrightsville sewer system is not in good shape. This is one reason the issue arose. Of course, the City is aware that when a sewer system is not properly operated, litigation for violation of federal and state environmental statutes and regulations against the operator is a real possibility. Indeed, only in the last few days has the City finally received notice that it is no longer under a federal consent decree based upon the failure of the Little Rock

Memorandum to Mayor Scott & Members of the Board of Directors  
Re: Extraterritorial Extension of Utilities: Sewer Service to Wrightsville, Arkansas  
02 April 2024: Page 6 of 6

Sanitary Sewer Committee – i.e., the prior name of WRA – to deal with environmental issues such as sanitary sewer overflows. This consent decree has been in place for at least two decades, and compliance has only now been possible. Notwithstanding any contractual condition to the contrary, the City cannot guarantee that if it permits WRA to become involved in the sewer operations for Wrightsville, it will not become involved federal litigation as to the condition of the system.

A second practical issue deals with CAW. If CAW funds are used to provide sewer services to Wrightsville, yet its authority only applies to the provision of water services, will ratepayer monies be used for a purpose the utility does not possess? If so, while CAW may be an entity that can sue and be sued in its own behalf, the City somehow will be involved should a ratepayer claim that its funds are being spent illegally. If nothing else, CAW financing agreements can be entered without the consent of both the North Little Rock City Council, and the Little Rock Board of Directors.

#### CONCLUSION

**The decision to authorize WRA to enter into a contractual agreement with CAW is not a simple one. Fundamental issues as to the authority of CAW to contractually agree to provide such service is not answered. Even though there have been limited occasions where the City has permitted the extraterritorial extension of sewer services, its ability to conclude that it is bad policy to do so will be diminished, if not abrogated, each and every time it decides to take such action. Finally, the proposed agreement really does not provide any security to the City moving forward.**

TMC:ct

cc. Emily Cox, Acting City Manager (via email)  
Kendra Pruitt, Chief of Staff to Mayor Scott (via email)  
Susan Langley, City Clerk (via email)  
Lynette Perez, Chief Deputy City Attorney (via email)  
Debbie Wisdom, Executive Legal Manager (via email)  
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