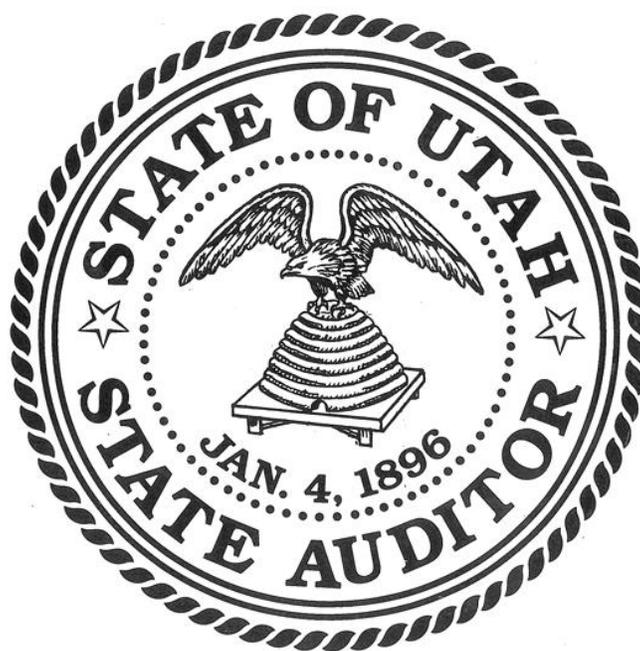


KANE COUNTY
Oversight of
Canyon Land Special Service District and
Kane County Recreation & Transportation Special Service District

Findings and Recommendations
For the Period January 2011 through December 2015

Report No. KANE-16-SP



OFFICE OF THE
STATE AUDITOR

AUDIT LEADERSHIP:

John Dougall, State Auditor
Jeremy Walker, CPA, Manager



OFFICE OF THE
STATE AUDITOR

REPORT NO. KANE-16-SP

April 11, 2017

Kane County Commission
76 North Main St.
Kanab UT, 84741

Dear Commissioners:

We have performed the procedures described below to certain aspects of internal control and compliance at Kane County regarding the county's oversight of the Canyon Land Special Service District and Kane County Recreation & Transportation Special Service District (collectively referred to as the "SSDs") for the period January 2011 through December 2015, unless otherwise noted. The purpose of these procedures is to assist the Kane County Commission, which has oversight responsibilities for the SSDs, in evaluating internal controls and compliance with state laws.

- We reviewed the SSDs' compliance with certain laws.
- We reviewed the compensation received by certain Kane County officials for either serving on SSD boards or contracting with the SSDs.

Our procedures were more limited than would be necessary to express an audit opinion on compliance or on the effectiveness of internal control or any part thereof. Accordingly, we do not express such opinions. Alternatively, we have identified the procedures we performed and the findings resulting from those procedures. Had we performed additional procedures or had we made an audit of the effectiveness of internal control, other matters might have come to our attention that would have been reported to you.

Our findings resulting from the above procedures are included in the attached findings and recommendations section of this report. By its nature, this report focuses on exceptions, weaknesses, and problems. This focus should not be understood to mean there are not also various strengths and accomplishments. We appreciate the courtesy and assistance extended to us by the personnel of the Kane County Commission during the course of the engagement, and we look forward to a continuing professional relationship. If you have any questions, please contact Jeremy Walker, Local Government Manager, at 801-538-1040 or jeremywalker@utah.gov.

Office of the State Auditor
Office of the State Auditor

TABLE OF CONTENTS

	<u>Page</u>
BACKGROUND	1
FINDINGS AND RECOMMENDATIONS:	
1. Lack of Proper Oversight	2
2. Potential Conflict between Public Duties and Personal Interests	3
3. Failure to Clearly Identify District Type	4
RESPONSE FROM KANE COUNTY COMMISSION	5

BACKGROUND

Utah Code 17D-1, part 2, allows a county or municipality to create a special service district (SSD). SSDs are special-purpose local governments, meaning that they generally provide a single specific service, or a group of closely related services, to a defined geographical area. In Utah, SSD budgets vary widely—some SSDs have a few hundred dollars and others have many millions of dollars. SSDs operating with small budgets are required to comply with nearly all laws required of larger entities. However, small budgets generally do not justify employing permanent individuals to provide professional services, such as accounting and legal services. Small budgets may also make it difficult to hire professionals on a temporary or contract basis. As such, SSD board members often perform support that may be outside of their area of expertise.

State statute also allows for the creation of a local district (LD), which is similar to an SSD. One significant difference between LDs and SSDs is the oversight responsibility of the creating entity. When an SSD is created, the creating entity may function as the governing body or may appoint an administrative control board (board). The only powers that may be exercised by the board are those granted by the creating entity. Certain powers, such as the ability to tax, cannot be delegated to the board and must be imposed for an SSD by the creating entity. Also, a creating entity may not grant powers it does not have. *Utah Code* 17D-1-301(4) provides that any power granted to a board may be “modified, limited, or revoked” at any time by the creating entity. Unlike SSDs, LDs do not rely on the creating entity to exercise powers, and powers cannot be unilaterally revoked by the creating entity.

Creating entities should provide oversight for any entity they create. Laws relating to SSDs provide creating entities with the tools necessary to provide this oversight. Oversight should ensure compliance with applicable laws, which may include appointing members to the SSD board and providing professional services to the SSD. When a creating entity appoints a member of their governing body to the board, that member of the creating entity may serve with or without compensation. Also, when the creating entity provides professional services on behalf of the SSD, it may charge the SSD for those services.

We have concerns with two SSDs created by Kane County—Canyon Land Special Service District (Canyon Land), and Kane County Recreation & Transportation Special Service District (R&T). Members of both entities’ administrative control boards are appointed by the Kane County Commission. Concerns about these entities are summarized in the findings and recommendations in this report while specifics are outlined in the two separate reports to those entities (see CCID-16-SP-B and CCID-16-SP-C). Concerns related specifically to the Kane County Commission’s duties are outlined in the findings below.

As noted in Finding No. 3 of this report, there is some disagreement among the State Auditor, Canyon Land personnel, and Kane County officials as to whether the entity referred to in this report as “Canyon Land” is operating as a special service district or a local district. The State Auditor considers Canyon Land to be a special service district; however, regardless of how Canyon Land is classified, we believe that Kane County still bears some oversight responsibility due to the fact that Kane County appointed the Canyon Land board members.

FINDINGS AND RECOMMENDATIONS

1. LACK OF PROPER OVERSIGHT

The Kane County Commission (Commission) failed to properly oversee the activities of Canyon Land and R&T. As the creator of these SSDs, the Commission is ultimately responsible for ensuring these SSDs comply with the law and ensure that funds are appropriately used.

Many of the following concerns noted in our separate reports to those SSDs could have been prevented had the Commission provided appropriate oversight, including ensuring that the SSDs received proper training on their responsibilities and limitations:

- Improper Imposition of Property Tax
- Failure to Adopt Purchasing Policy
- Board Member Contracting with District in Violation of Law
- Failure to Conduct Sewer Operations in Compliance with Sponsorship Mandate
- Board Member Compensation in Excess of Legal Maximum
- Board Member Received Improper or Duplicate Compensation
- Possible Excessive Compensation Paid to Board Member
- Failure to Use Competitive Bid Process Resulted in Overpaying for Accounting Services
- Potential Violation of State Nepotism Law and Violation of Open and Public Meeting Act

Recommendation:

We recommend that the Kane County Commission:

- **Follow up with Canyon Land and R&T to ensure they implement the recommendations from our reports to those entities.**
- **Ensure that all SSDs within the County appropriately use funds and comply with the law.**
- **Ensure that appointed board members for all SSDs within the County receive training related to their duties and limitations.**
- **Monitor board member compensation at LDs and SSDs within the county to ensure that it is commensurate with work performed and does not exceed legal limits.**

2. POTENTIAL CONFLICT BETWEEN PUBLIC DUTIES AND PERSONAL INTERESTS

As noted in the Background section above, counties that create SSDs should provide them with professional resources to ensure the SSDs comply with the law. As noted in our reports to Canyon Land and R&T, Kane County officials currently serve on boards or work for various SSDs. These types of arrangements could raise questions regarding whether the county officials obtained these positions by virtue of their official capacity with the County.

Public officer and employee ethics laws generally allow public officials the same opportunities to acquire economic interests as all other citizens, as long as it does not interfere with the discharge of their public duties. However, *Utah Code* 17-16a-4(1)(b) prohibits a public official from using their position, "... to secure special privileges for the officer or for others...". Also, *Utah Code* 17-16a-8 requires certain disclosures by the public official when "Any personal interest of or investment ... creates a potential or actual conflict between the official's personal interests and [his/her] public duties....".

We requested disclosure statements submitted by the certain county officials and were provided with three statements — two statements submitted by the clerk, dated July 22, 2015 and April 19, 2016, and one statement submitted by the County Commission, dated September 14, 2015. The law required disclosure statements prior to this time; nevertheless, the County did not use this information to establish oversight and ensure that the potential conflict did not interfere with public duties.

In order to protect public officers and employees from real or perceived conflicts of interest when providing services to SSDs, the County Commission should provide close oversight of this type of arrangement. This oversight could include any of the following:

- Request that SSDs inquire with the County (creating entity) to determine if the County is willing or able to provide professional services. The County Commission could require that SSDs pay the County directly for professional services provided by its officers and employees, and the County could appropriately compensate these employees for their additional work.
- If the County is not willing or able to provide professional services, the SSD should go through a competitive procurement process to obtain the services. The entity's purchasing policy will provide procedures for competitively procuring these professional services, allowing all qualified candidates the opportunity to be selected.
- Ensure that public officers or employees have disclosed personal interests that "...create a potential or actual conflict between the official's personal interests and... public duties..." as required by law. The Commission should examine the disclosed potential conflicts to ensure that any services provided to SSDs by public officers or employees do not interfere with their public duties. For example, some services the county clerk/auditor provides to Canyon Land may fall within the scope of her responsibilities as county clerk/auditor. A clear distinction must be made regarding responsibilities that fall within the scope of county employment and those that do not.

Recommendation:

We recommend that the Kane County Commission:

- **Ensure that public officers or employees disclose potential or actual conflicts between personal interests and public duties as required by law and ensure that the conflicts do not interfere with public duties.**
- **Require that all payments received by county elected officials or employees from LDs or SSDs be disclosed annually to the County Commission and that they evaluate the appropriateness of these payments.**
- **Establish appropriate safeguards related to compensation to protect commissioners from real or perceived misconduct.**

3. FAILURE TO CLEARLY IDENTIFY DISTRICT TYPE

Kane County officials and Canyon Land's Attorney have questioned whether Canyon Land is an LD or SSD. As noted above, the distinction is important in order to determine the level of oversight to be exercised by the County and to determine which laws are applicable.

The confusion regarding Canyon Land is caused by its initial creation and subsequent transition to an SSD. The Lt. Governor's Office issued a "Certificate of Creation" authorizing the creation of the Canyon Land Improvement District (an LD) on March 21, 2006. On November 23, 2009, the Lt. Governor's Office issued a "Certificate of Creation" authorizing the creation of the Canyon Land Special Service District. A resolution passed by the Kane County Commission creating the Canyon Land Special Service District stated, "The Commission intends that the District created herein will replace the Canyon Land Improvement District." Additionally, the July 28, 2009 Canyon Land Improvement District minutes state, "A motion was made by Trustee John Oberg and seconded by Trustee Homi Vazifdar to convert from Canyon Land Improvement District to Canyon Land Special Service District on December 31, 2009. The motion carried with all Trustees voting in favor." Because the Canyon Land Improvement District governing body took official action to transition from an LD to an SSD, we have concluded, despite the confusion noted above, that Canyon Land Improvement District was replaced by Canyon Land Special Service District effective December 31, 2009.

Recommendation:

We recommend that the Kane County Commission:

- **Work with Canyon Land to dissolve the Canyon Land Improvement District or transfer operations to the Canyon Land Improvement District and dissolve the Canyon Land Special Service District to eliminate any future confusion.**
- **Clearly identify all districts within the County, including the district type and associated oversight duties.**

**Response from
Kane County Commission**

To: Jeremy Walker
Utah State Auditor

From: Dirk Clayson
Kane County Commission

Re: Kane County Oversight of the Canyon Land Special Service District and Kane County Recreation & Transportation Special Service District

Dear Mr. Walker,

I appreciate the evaluation and recommendations for improvement that you have made regarding some of our special service districts. Based on calling these items to our attention, we have made some significant changes in how we provide oversight for these organizations. Kane County has also looked into the oversight of all twelve of the Service Districts and Local Districts formed in Kane County.

Kane County has addressed the following items to resolve future problems with Special Service Districts and Local Districts:

Determination of the type of Districts. Local or Special Service District

There was a significant amount of confusion regarding these issues within the twelve districts in Kane County. State Statutes have changed over the years regarding criteria under section 17 B, Local Districts and 17 D, Special Service Districts of State code. Some districts may include the name of Special Service District within their name but actually be a Local District, for example. Further complicating this review, some of our Districts are so old that the creation documents could not be found, so we have to look at the methods of operations to determine the correct status off the organization.

The determination of the type of district is a key aspect of to determine Kane County's role for management and oversight duties. Essentially the Special Service Districts are more actively managed by the County as the County has the ability to give or take away powers from these organizations and therefore also has some responsibility to provide some structure and review of powers and actions of these organizations. Local Districts, however, once created and endowed with their authority cannot have that authority taken away and do not have as much County oversight. The County oversight in regards to the local district is limited to assisting with a process to keep an active board in place and to offer training resources for these board members.

Kane County went through a laborious review process to determine which districts are Local and Special Service by reviewing their originating documents, where available, and looking at the operations of these districts and analyzing items such as the county liability and backstop functions for these organizations; analyzing if they are a financial component or independent unit from the county as well as evaluating the current status of their training and board members. We invited

LeGrand Bitter, Executive Director of Utah Association of Special Districts, to assist us with this evaluation, which was very helpful.

In addition, the State statutes now also allow for the change of a district if it is determined to be necessary, which allows us to modify the entity if needed.

Kane County has evaluated these twelve districts regarding these criteria and has provided a matrix for documenting their structure. See attached exhibit; Primary Component Unit. Out of the twelve Districts, we have determined that three of them need restructure to better manage these entities, see right hand column of the attachment.

Determination of Canyon Lands improvement District and Special Service District status

Regarding the confusion on the Canyon Lands Improvement District and the Canyon Lands Special Service District, we would offer the following background and direction. The Improvement District is a Local District used during the formation of the sewer system and also allows for additional service utilities to the infrastructure in the area. Apparently, there was some direction years ago that when the improvements were made that they should transfer over into a Special Service District and therefore the Canyon Lands Special Service District was formed. Current research on this matter concluded that the State regulatory authority from the Division of Environmental Quality and the State office for management of Districts both concur that there is no requirement for transferring these matters to another Special Service District and that they can operate indefinitely in the Improvement District.

There was evidence that there was intent to transfer assets and the operation of the Improvement District to the Special Service District by Kane County as the creator of the Special Service District and by the Improvement District from their meeting minutes. However, that is all that happened, and there was never any transfer of the property by recorded deed for the property that the sewer system is located on; there was never any transfer of bank accounts or funds; there was never any transfer of accounts to the clients or any other actual evidences of transfers. The recent meetings minutes still reflect the Canyon Lands Improvement District as the managing entity.

This review of the history, would pose the question, should these transfers of assets and management be completed to the Special Service District or should the Special Service District be eliminated and operations continued in the Improvement District. As both options would prove to be somewhat viable, the two deciding entities, Kane County and the Improvement District would both offer the direction that operations be continued in the Improvement District and that official actions be taken in meeting minutes by resolution to document that decision and the Special Service District be dissolved.

Kane County supports this course of action because this Improvement District is essentially one property owner serving the same ownership of property owners for the services being provided. In addition, we see that the future plans will be associated with similar property owners and commercial development that we consider to be a private matter. We see no compelling reason why the management of this organization be a burden of the county or it's citizens. Therefore, Kane County will take the following actions to resolve this matter confirming that Kane County has limited oversight and involvement with this organization; limited to ensuring current board members are in place and training being offered to the board members, both items which the County has addressed and will review later in detail:

Process to confirm the Canyon Lands Improvement District as the continuing operational entity for services and the dissolving of the Canyon Lands Special Service District as per- Utah Code Title 17B Chapter 1 Part 13

The County will take the necessary steps as outlined below to dissolve the Canyonlands Special Service District which is currently an inactive District.

First, the County will pass a resolution that clarifies that even though the SSD was created to take over the activities of the CID, this action was never taken and the CID has continued to operate. The County will ask the CID to pass a similar resolution that also clarifies and/or rescinds any action in the past that may have been taken towards transferring any operations to the SSD.

Second, the County will ensure that there is an Administrative Board in place with the SSD so that the other actions below can be taken. It is most likely that the County will appoint the County Commissioners as the Administrative Board.

Third, the Administrative Board of the District will adopt a resolution initiating the process of dissolution (17B-1-1303(1)(b))

Fourth, the board will post notice of a public hearing regarding the proposed dissolution. Notice will be posted at least five days in advance and in the newspaper, on the state website, in four locations, and mailed to each property owner in the district. (17B-1-1307)

Fifth, the Administrative Board will hold a Public Hearing to accept comments and answer questions from any interested person, on a weekday no earlier than 6p.m., within 45 days of passing the resolution (17B-1-1306)

Sixth, after the Public Hearing the Administrative Board will adopt a resolution of dissolution and deliver a notice of impending boundary action to the Lieutenant Governor within thirty days. (17B-1-1309)

Seventh, the board will wait for the Lieutenant Governor to issue a Certificate of Dissolution. (17B-1-1309)

Finally, the Administrative Board will file the Notice of Impending Boundary Action and Certificate of Dissolution with the County Recorder. (17B-1-1309)

Items regarding Procurement Policies and Guidelines:

Kane County needed to develop a documented procurement policy, which was completed on August 8, 2016, see attached. In addition, the Districts operating within Kane County need to have an operational procurement policy to use for providing purchasing decisions and for determining the methods to provide professional services for their operations. Kane County developed a process for procurement and involved the department managers in the review and creating of this document. It was passed by resolution. See attachment.

Kane County also informed all Districts that they must follow the procurement policy or adopt one of their own. A letter to this effect to notify the districts of this requirement was sent out to inform them of this.

Kane County District training

Kane County oversight duties for the districts require that we maintain a record of the districts for the following elements: board members and their terms and titles, training, and compensation. We have given the responsibilities to track these matters to John Livingston, Kane County Budget officer. He has developed a tracking sheet for these matters and has been working on the completion of these items and will continue to track future items for the commission oversight. See the attached tracking form and letter accounting for some of his activities in this regard. Note that several training items, which also include conflict of interest training are now provided.

Kane County Compensation review

Kane County will address a fair compensation guideline and disclosure policy that will provide compensation guidelines and annual compensation review by the County Commission. This policy will also ensure that compensation levels for board members fall within the Utah State regulations. We plan to have this policy in place by July 2017.

Kane Policy to address Nepotism:

Kane County follows the State Statutes regarding nepotism and the Kane County policy manual states:

104 HIRING OF RELATIVES

The employment of relatives is governed by Utah's anti-nepotism statute, Utah Code §52-3-1 through 4, as amended.

Kane County appreciated the assistance from the State Auditors office to identify and address these matters.

Sincerely,



Dirk Clayson
Kane County Commission

Training Session: Jan. 12, 2017 Legerand Bitter and Ryan Roberts 1-4 pm. Then 6-9 pm. Kane County Commission Chambers

DATE UPDATED: April 10, 2017, By Kane County Commissioners

Primary Component Unit	Local or Special SSD	Appointed	Elected	Funding		County	Component	ACTIONS
				Sources	Delegated			
				Financial Powers	Liability	Liability	UNIT Y/N	
Canyonlands SSD	SSD							Dissolve
Canyonlands County Improvement Dist.	LD	X						
Cedar Mt Fire Prot. LD	LD		X					
Church Wells SSD	SSD	X						
East Zion SSD	SSD	X						
Glen Canyon Big Water SSD	Dissolve: SSD; SS 17-D	X						Dissolve
Kane County HR SSD	SSD		X					Change to Local District
Kane County REC and TRANS SSD	SSD	X						
Kane County Water Conservancy District	Local District	X						
Long Valley Sewer SID	SID	X						
Vermillion Cliffs SSD	SSD	X						
Western Kane County SSD	SSD	X						
17D = SSD								

17B = Local, applies to both; 311 = both

Ordinance # 0-2016-7

Summary for publication provided

Title Establishing a Kane Co. Document Code

Action	Date	Copy Attached
Agenda Posted	8/4/16	
Agenda *PMN.gov posting	8/4/16	
Published in the SUN	8/18/16	
Adopted	8/8/16	
Sent to Codifiers		

Commissioners Name	Voting Record
<u>Clayson</u>	<u>aye</u>
<u>Watson</u>	<u>aye</u>
<u>Smith</u>	<u>aye</u>

Karla Pluerson

Clerk/ Auditor Certification

<http://kane.utah.gov/>

*PNM <http://www.utah.gov/pmn/index.html>

Uclerk/auditor/Ordinaces & Resoltuions/Ordinance certification

County Seal



KANE COUNTY ORDINANCE NO. O 2016 - 7

**AN ORDINANCE ESTABLISHING
THE KANE COUNTY PROCUREMENT CODE**

WHEREAS, Utah State Code contains a procurement code that the County is required to comply with unless it adopts its own procurement policies;

AND WHEREAS, The State Procurement Code is unnecessarily burdensome and difficult to comply with for a county the size of Kane County;

AND WHEREAS, Kane County desires to implement a local procurement code in order to provide clarity and uniformity in the County's procedures for the procurement of goods and services; efficiency, effectiveness and economy in the County's procurement activities; fair and equitable treatment of all people or parties who do, or wish to, provide goods or services to the County; effective, broad based competition with recognition of the need to support the local economy; and the highest and best value in procurement items, which may not be the lowest cost.

NOW THEREFORE, THE COUNTY LEGISLATIVE BODY OF KANE COUNTY, STATE OF UTAH ORDAINS AS FOLLOWS:

I. **PURPOSE AND INTENT.** Kane County has adopted this procurement code setting out the procedures for the County's procurement of goods and services with the intent to provide for:

- A. Clarity and uniformity in the County's procedures for the procurement of goods and services;
- B. Efficiency, effectiveness and economy in the County's procurement activities;
- C. Fair and equitable treatment of all people or parties who do, or wish to, provide goods or services to the County;
- D. Effective, broad based competition with recognition of the need to support the local economy; and
- E. The highest and best value in procurement items, which may not be lowest cost.

II. **TITLE:** This Ordinance shall be known as the Kane County Procurement Code.

III. **REPEAL OF PREVIOUS RESOLUTIONS AND ORDINANCES:** All previous ordinances or resolutions establishing, implementing or amending any process or procedure regarding procurement are hereby repealed and replaced with this ordinance.

IV. EXEMPTION FROM STATE PROCUREMENT CODE. By adoption of this procurement code by ordinance, Kane County has exempted itself from the definition of Local Government Procurement Unit under U.C.A § 63G-6a-13(a) with the intent to exempt the County from the provisions of the Utah Procurement Code to the greatest extent permitted by law.

V. DEFINITIONS. For purpose of this policy, the following words and phrases have the meanings given under this section.

- A. "Artificially Divided" means intentionally or knowingly dividing a procurement by making multiple procurements or dividing an invoice or purchase order into one or more smaller procurements to limit the requirements of a procurement under this code, but does not include dividing purchases to allow for storage capabilities, freshness of product, shipping/delivery costs or other reasonable considerations of size and scope of a procurement, or to allow for options that accommodate vendor expertise and cost effectiveness or to break apart to allow for local bidding.
- B. "Business" means any corporation, partnership, individual, sole proprietorship, joint stock company, joint venture, limited liability company, or any other private legal entity.
- C. "Contract" means any agreement the County enters into for the procurement or disposal of supplies, services or construction.
- D. "Electronic Bid" means any bid that was obtained by electronic means including but not limited to email communication from a business or other vendor, other electronic communication that results in a bid for a procurement item, or viewing a procurement item on the website of a business or other vendor.
- E. "Emergency Event" means an eminent threat to the public's health, welfare, or safety or an event which has caused or is likely to cause significant damage to property, which requires immediate action to protect against such threat.
- F. "Person" means any individual, business, union, committee, club, other organization or legal entity, or group of individuals.
- G. "Procure", "Procurement" means buying, purchasing, renting leasing, leasing with an option to purchase, or otherwise acquiring any supplies, services, or construction.
- H. "Procurement Item" means a supply, a service, construction or technology.
- I. "Procurement Officer" means the Kane County Budget Officer or his/her designee.
- J. "Request For Proposals" or "RFP" means all documents, whether attached or

incorporated by reference, used for soliciting proposals.

- K. "Request For Qualifications" or "RFQ" means all documents, whether attached or incorporated by reference, used to solicit information on the qualifications of potential bidders.
- L. "Small Purchase" means a procurement of \$5,000 or less.
- M. "Sole-Source Provider" means there is only one source for the procurement item; or the award to a specific supplier, service provider or contractor is a condition of a donation that will fund the full cost of the supply, service or construction item; or the procurement item is needed for trial use or testing to determine whether the procurement item will benefit the County.
- N. "Specifications" means all descriptions or documents, whether attached or incorporated by reference, used to describe the supplies, services or construction to be purchased.
- O. "Threshold Amount" means the maximum amount for a procurement established pursuant to Section IX and Section X of this Code.

VI. AUTHORITY.

- A. Only the County Commission has authority to expend County funds for procurement or to enter into any contract for procurement, except to the extent they have delegated that authority. Elected Officials and Department Heads are hereby delegated such authority as set forth herein. Employees, agents or other representatives of the county shall not expend funds, solicit proposals or bids, respond to solicitations or in any other way obligate the county to expend funds without the authority of the county governing body or the appropriate Elected Official or Department Head.
- B. **ELECTED OFFICIALS.** By adoption of an annual budget, the County Commission delegates to each Elected Official the authority to expend funds for procurement as they are presented in the approved budget for the Elected Official's office or as the Elected Official is authorized to transfer money from one line item to another within a budget as set forth in the Interdepartmental Line Item Transfer Ordinance. All procurements made under this delegated authority shall be made in compliance with all other provisions of this Code.
- C. **DEPARTMENT HEADS.** Any Elected Official may delegate their authority to expend funds or a portion of their authority to expend funds for procurement as the Elected Official sees fit to a Department Head. All decisions regarding procurement made by an authorized Department Head shall be made in compliance with all other provisions of this Code.

VII. EXEMPTIONS FROM POLICY.

- A. FEDERAL OR STATE FUNDS. When procurement involves the expenditure of federal or state assistance funds, the County shall make exceptions to the procedures required under this code to the extent necessary to comply with applicable federal and state law and regulations related to the use of those funds.
- B. GRANTS, GIFTS AND BEQUESTS. The County may make exceptions to the procedures required under this code to the extent necessary to comply with the terms and conditions of any grant, gift or request, that are otherwise consistent with law.
- C. EMERGENCY PROCUREMENTS. The County may make exceptions to the procedures required by this code to the extent necessary for the timely procurement of goods and services during an Emergency Event, and for goods and services of an immediate nature to manage an Emergency Event.
- D. COOPERATIVE PURCHASING CONTRACTS. The County may make procurement decisions without complying with this code when utilizing one of the following methods:
 - 1. Procurements under a contract administered by the Utah Division of Purchasing;
 - 2. Procurements administered under an Interlocal Cooperation Agreement that the County participates in;
 - 3. Procurements under a contract administered by the Utah Association of Counties or the National Association of Counties; or
 - 4. Direct comparison to a procurement item that could be purchased under sections one through three above which results in an equal to or greater monetary benefit to the county.
- E. ADVERTISING. Advertising by its very nature is dependent on the source of the advertising and is not conducive to formal procurement policies. If using any procurement process described herein may add benefit to the County the appropriate official may utilize that process. Otherwise, procurement items for advertising shall be considered a sole-source and direct negotiations may be used. This section does not exempt the County from procurement processes required to select an entity that will provide services in developing an overall scheme, method or approach for advertising.

VIII. CATEGORIES OF PROCUREMENTS. The County procures a wide variety of goods and services at varying intervals in support of the many departments and programs administered by County. The following categories of purchases will be utilized in recognition that a single process for all procurements would not be an efficient or effective policy for the County.

- A. Basic Supplies and Equipment

- B. Operational Services
- C. Capital Expense Equipment
- D. Professional Services
- E. Pass Through Services
- F. Architect-Engineer Services
- G. Construction and Repair Contracts
- H. Sole-Source Provider
- I. Fleet Management Purchases
- J. Other Procurements

IX. PROCUREMENT PROCEDURES.

- A. SPECIFICATIONS. Written specifications shall be developed for all procurements with the exception of:
 - 1. Basic Supplies and Equipment;
 - 2. Operational Services of less than \$5,000; or
 - 3. Purchases made utilizing Cooperative Purchasing Contracts in compliance with Section V(D).
- B. ALL SPECIFICATIONS REQUIRED BY THIS CODE SHALL:
 - 1. Be as detailed as necessary to assure the County procures goods and services which best meet the needs of the county;
 - 2. Provide flexibility in requirements to the extent possible to allow for options in a procurement which still meets the needs of the County;
 - 3. Be provided as a part of any Request for Proposal, Invitation to Bid, or Request for Qualifications.
- C. ALL CONTRACTS SHALL INCLUDE:
 - 1. Contractual terms and conditions required under Section XX.
 - 2. Bond requirements as required under Section XV.

X. BUDGETED NOMINAL COST PROCUREMENT. The County may procure goods and services without the use of Electronic or Telephonic Bids, Sealed Bids, RFPs, RFQs or Direct Negotiations when:

- A. The cost of the procurement is a small purchase (\$5,000 or less);
- B. The procurement is for goods and services other than Professional Services or Architect-Engineer Services; and
- C. The cost of the procurement has been budgeted.

XI. ELECTRONIC OR TELEPHONIC BIDS. Procurements may be made without the use of Sealed Bids, RFPs, RFQs or Direct Negotiations by using electronic or telephonic bids when:

- A. The cost of the procurement is greater than \$5,000, but less than \$50,000, or the cost of the procurement is \$100,000 or less and is the procurement item is a fleet vehicle or construction equipment;
- B. The procurement is for goods and services other than Professional Services or Architect-Engineering Services;
- C. A reasonable attempt has been made to compare the cost of the procurement with three or more providers through Electronic or Telephonic Bids; and
- D. The Electronic or Telephonic Bids are documented as part of the procurement process.

XII. FORMAL PROCUREMENT. Procurement of items over \$50,000.00, fleet vehicles and construction equipment over \$100,000, procurement of professional services, or procurement of architect-engineering services, which do not otherwise qualify for an exemption under this code, shall use a Sealed Bid, Request for Proposals, or Request for Qualifications process as set forth herein. The County may use one or more of these processes in its sole discretion.

XIII. SEALED BIDS. Any procurement made utilizing a Sealed Bid shall be conducted under the following procedures:

- A. An invitation to Bid shall be advertised at least ten (10) days prior to the date the Sealed Bids are required to be delivered and shall include;
 - 1. Specifications related to the procurement;
 - 2. The date and time the Sealed Bid is required to be received by the office of the County Budget Officer;
 - 3. The date and time of the opening of the Sealed Bids; and
 - 4. Bonding and Insurance requirements.
- B. All Sealed Bids shall be received by the office of the Kane County Budget Officer by the date and time set forth in the Invitation to Bid to be considered a valid Sealed Bid;
- C. Sealed Bids shall be opened publicly in a properly noticed meeting of the governing body of the County and in the presence of one or more witnesses at the time and place designated in the Invitation to bid; and
- D. A record of the name or each bidder, the amount of each bid and any other relevant information shall be made and shall be open to public inspection.
- E. The County may include in the specifications of the Invitation to Bid the itemization requirements set forth in Section XV(B)(1) through (3).
- F. The successful bidder shall be required to enter into a written contract with the County.

XIV. REQUEST FOR QUALIFICATIONS (RFQ). The County may utilize a Request for Qualifications procedure when the qualifications of the provider are of significant importance in the procurement to identify providers qualified to provide specialized services prior to issuing a Request For Proposal for the procurement of Operational Services, Professional Services, Architect-Engineering Services or other specialized goods or services, or when determining a Sole Source Provider circumstance.

XV. REQUEST FOR PROPOSALS (RFP).

- A. The County may utilize a Request for Proposals procedure when the potential options for goods and services which would meet the needs of the County are extensive enough to make review of proposals more effective than development of detailed Specifications and shall include notice of the bonding and insurance requirements of this policy.
- B. Requests for Proposals may be in a broad range of forms with specifications that are broad enough or specific enough to meet County needs. The specifications in a Request for Proposal may include any of the following:
 - 1. The requirement to set forth the total cost of the Proposal and also the itemized cost of any or all individual procurement items within the Proposal;
 - 2. If individual procurement items within the Proposal are required to be itemized, the option of the County to accept or reject any or all individual itemized procurement item;
 - 3. If individual procurement items within the Proposal are required to be itemized, the option of the County to require that later changes to the work, as set forth in sections XXII(B)(1) through (3), regarding the individual itemized procurement item, be at the same rate as set forth in the Proposal.
- C. A Request for Qualifications may be utilized in conjunction with a Request for Proposals to pre-qualify those providers from whom the County will accept Proposals.

XVI. SOLE-SOURCE AND DIRECT NEGOTIATION.

- A. The County may enter into negotiations with a provider without utilizing any other form of procurement provided for under this section when procuring goods or services from a Sole-Source Provider.
- B. The County Commission shall determine when Direct Negotiation or Sole-Source Procurement is appropriate. Applications to the Commission to use direct negotiation and sole-source procurement shall be accompanied by an

explanation as to why no other source will be suitable or acceptable to meet the need.

- C. Direct negotiation or sole-source procurement shall be used only if an offer is reasonably available from a single supplier. A requirement for a particular proprietary item does not justify sole source procurement if there is more than one potential offeror for that item. Circumstances which might allow sole-source procurement and direct negotiation include: 1) where the need for professional services is the paramount consideration; 2) a test or pilot is being conducted; 3) when time restrictions are paramount and would prohibit a full procurement process; or 4) the award to a specific supplier, service provider or contractor is a condition of a donation that will fund the full cost of the supply, service or construction item. In cases of reasonable doubt, sole-source procurement and direct negotiation will not be authorized.
- D. Public Notice shall be given for sole-source procurements exceeding \$20,000. The notice shall be published on the Utah Public Notice Website at least five working days in advance procuring the item. The notice shall contain a brief statement of the proposed procurement, the proposed sole source provider and the justification for the sole source procurement.
- E. When using a sole-source provider negotiation shall be used to achieve the best use of tax dollars.

XVII. BONDS.

- A. The type and amount of any bond(s) required should be included in the Specifications provided as part of any Invitation to Bid or Request for Proposal released by the County. In addition to any bond(s) required under federal, state or local law or rule, the County should consider requiring Performance Bonds as part of contracts for Operational Services, Professional Services and Architect-Engineer Services. The County should consider requiring the following bonds in amounts determined by the County to properly protect the County:
 - 1. A Bid Bond in an amount commensurate with the cost to the County if a bidder withdraws a bid after opening of bids up to the full amount of the bid for all Sealed Bids for construction or repair contracts and Capital Equipment purchases. It is recommended that the bid bond is five percent of the total bid.
 - 2. A Performance Bond up to the full cost of the contract for all construction and repair contracts.
 - 3. A Payment Bond commensurate with the payments to be made to all subcontractors at all levels, vendors and providers up to the full amount of the contract for all construction and repair contracts.

- B. The County may at its sole discretion accept other forms of protection in place of bonds such as letters of credit, escrow accounts or collateral agreements.
- C. The County may at its sole discretion waive the requirement of a bid, performance or payment bond for circumstances in which the procurement officer considers any or all of the bonds to be unnecessary to protect the procurement item.

XVIII. CORRECTION OF ERRORS. The County may at its sole discretion allow for correction of inadvertent mistakes prior to award of a contract or bid:

- A. To responses to Request for Qualifications prior to award of final contract.
- B. To proposals made in response to a Request for Proposal prior to award of final contract.
- C. To a Sealed Bid after delivery of a timely Sealed Bid to the County but prior to the opening of the Sealed Bids.
- D. To a Sealed Bid after opening of the bids if the correction is to information provided in the bid that does not change any term or condition of the Sealed Bid that effects the cost, quality, quantity or delivery of the product or service.
- E. The County may reject any correction it deems is beyond the scope of correction of an inadvertent mistake.

XIX. SELECTION AND AWARD. The County shall use reasonable diligence in awarding a contract or processing a purchase with the selected provider in a timely manner after the following determinations have been made;

- A. Providers which did not meet the requirements or criteria of this policy;
- B. Providers which did not meet the minimum requirements of a Request for Qualifications;
- C. Proposals or bids which did not meet the specifications or requirements set forth in an Invitation for Bid or Request for Proposal;
- D. Any bid which the County Commission does not consider a responsible bid; and
- E. The provider, proposal or bid which best meets the County's long term needs and value, as determined by the County.

XX. APPEAL PROCEDURES. Any actual or prospective bidder, proposer, offeror or contractor who is aggrieved in connection with the solicitation or award of a contract or procurement may submit an appeal in writing to the County Budget Officer within five (5) working days after the aggrieved party knows or should have known of the facts, but in no case later than ten (10) working days after the award has been made. The County Budget Officer or his/her designee shall promptly issue a decision regarding any appeal in writing to the

aggrieved party filing the appeal. The decision shall state the reasons for the action taken and the aggrieved party's right to appeal to the County Commission. If a written decision is not issued by the County Budget Officer within thirty (30) days, the aggrieved party may appeal directly to the County Commission. The County Commission shall be the final appeal on the county level.

XXI. PREFERENCE IN SELECTION PROCESS. LOCAL VENDORS.

- A. In selecting a procurement item, the lowest cost item is not a general requirement. County shall consider the cost of the procurement item, the value of the procurement item, the speed and convenience in delivery of the item, the quality of services, and other factors that will provide the County with the highest and best value.
- B. In the attempt to attain the highest and best value, County may show preference to local vendors even though their bid or proposal may not be the lowest bid. In showing such preference, County shall justify this by determining that such decision will result in equal to or greater long-term value of such procurement for certain reasons such as better and/or more convenient service, maintenance, warranty, support of the local economy, etc.

XXII. CONTRACTS

- A. COUNTY ATTORNEY APPROVAL OF CONTRACTS. All contracts entered into for any procurement under this policy must be approved as to form and compliance by the county attorney's office prior to execution.
- B. CLAUSES TO BE INCLUDED IN CONTRACTS. The following clauses shall be included in each contract for any procurement under this policy, unless specifically waived by the County Commission after review with the county attorney:
 - 1. The unilateral right of County to order, in writing, changes in the work within the scope of the contract and changes in the time of performance of the contract that do not alter the scope of the contract work.
 - 2. Variations occurring between estimated quantities of work in a contract and actual quantities.
 - 3. Other Terms for Change Orders and other changes or additions to work.
 - 4. The right of the County to suspend work.
 - 5. Vendor compliance with all federal, state and local laws, ordinances, rules and regulations.
 - 6. Bonding requirements
 - 7. Proof of individuals/businesses properly licensed with appropriate state or

- local authority.
8. Contract Providers or Vendors agreement to indemnify County.
 9. Contract Providers or Vendors retention or product liability/manufacturers liability.
 10. Insurance required of Contract Providers or Vendors.
 11. Anti-discrimination language.

XXIII. CANCELLATION AND REJECTION OF PROPOSALS OR BIDS. The County may cancel any invitation, request or other solicitation, or may reject any or all bids or proposals when such cancellation or rejection is in the best interest of the County as determined at the sole discretion of the county. This Cancellation and Rejection provision should be included in all Invitations to Bid, RFQs and RFPs.

XXIV. PROHIBITED METHODS OF PROCUREMENT. Procurements shall not be made pursuant to or in response to telephone or telemarketing solicitations to County employees.

XXV. UNLAWFUL CONDUCT AND PENALTIES

- A. **ARTIFICIALLY DIVIDING PROCUREMENTS.** It is unlawful for a person to intentionally or knowingly divide a procurement into one or more smaller procurements with the intent to make a procurement qualify as a small purchase or other less restrictive threshold amount, if, before dividing the procurement, it would not have qualified as a small purchase or other less restrictive threshold amount.
- B. **GRATUITIES OR KICKBACKS.** For purposes of this subsection, the terms “gratuity” and “kickback” shall have the same meanings as defined in Utah Code §63G-6a-2402 as amended. It is unlawful for a person who knowingly engages in the following conduct:
 1. For a person who is seeking a contract with or a grant from the County knowingly to give or offer, promise or pledge to give, a gratuity or kickback to the County, or any person delegated authority to expend funds for procurement.
 2. For any person delegated authority to expend funds for procurement, knowingly to receive or accept, offer or agree to receive or accept, or ask for a promise or pledge of, a gratuity or kickback from a person who has or is seeking a contract or a grant from the County.
- C. **PENALTIES.** For enforcement of this subsection, Kane County hereby adopts by reference the penalty provisions of Utah Code §63G- 6a-2401 et.al.(2016) as amended.

XXVI. SEVERABILITY. If any section, part, or provision of this Procurement Code is held by a court of competent jurisdiction to be invalid or unenforceable such invalidity or unenforceability shall not affect any other section, part, or provision of this Policy, and all sections, parts and provisions of this Policy shall be severable.

End of Ordinance

This Ordinance shall be deposited in the Office of the County Clerk, and shall take effect fifteen (15) days after the date signed below.

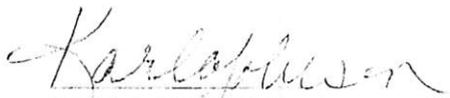
The County Clerk is directed to publish a short summary of this Ordinance with the name of the members voting for and against, together with a statement that a complete copy of the ordinance is available at the Office of the County Clerk, for at least one publication in a newspaper of general circulation in the county, or as otherwise permitted and required by Utah State Law.

ADOPTED this 8th day of August, 2016.



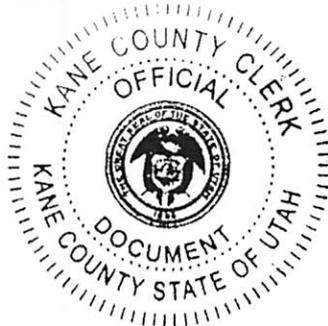
Dirk Clayson, Chair
Board of Commissioners
Kane County

ATTEST:



KARLA JOHNSON
Kane County Clerk

Commissioner Clayson voted aye
Commissioner Matson voted aye
Commissioner Smith voted aye



PUBLIC NOTICE

Kane County Board of Commissioners adopted Ordinance O- 2016-7, which establishes a Kane County Procurement Code. Copies of the ordinance are available in the Kane County Clerk's Office located at 76 N Main Kanab, UT 84741; 435-644-2458. In summary; the Ordinance defines the methods of procurement for Kane County to provide clarity and uniformity in the county's procedures for the procurement of goods and services; efficiency, effectiveness and economy in the County's procurement activities; fair and equitable treatment of all peoples or parties who do, or wish to provide goods or services to the County; and the highest and best value in procurement items which may not be the lowest cost.

Karla Johnson

Kane County Clerk/Auditor

Published in the Southern Utah news, August 18, 2016

Special Services District Tracker
Kane County, Utah
September, 2016

District Name:

Date Established:

February 27, 2001'

Resolution #:

2001-01: wastewater treatment services

Date Established:

October 15, 2001

Resolution #:

2001-02: culinary water services

Date Established:

May 20, 2002

Resolution #:

2002-02: fire protection services

Scope of Services:

Waste Water Collection and Treatment;
Amended to include fire protection and culinary water

Legal Location:

NW 1/4 section of Section 8, NE 1/4 section of Section 8, SE 1/4 section of Section 8,
Township 41 South, Range 9 West, Partial of South half of Section 5 and SW 1/4 of Section 9, SW 1/2 of NW 1/4 Section 9
and 330' strip of West side of SE 1/2 section of Section 9, TWP 41 South, Range 9 West.

Regular Meeting Dates:

2nd Friday monthly

Budget Meeting:

Friday, Oct. 14th, Zion Ponderosa Ranch evening

Taxing Authority:

Yes

Legislative Designation at Inception:

§ 17A - 2-1327 Independent District

Current Designation and Transition Date:

unknown

Board Members:
Contact Info
Term Expires:

Compensation per member

Financial and Procurement
Procedures Training Last Held:

unknown

Member Compensation policy:

Known: no compensation available

Elections of Officers :

unknown

Concerns:



John Livingston
Kane County Budget Officer
76 N. Main
Kanab, UT. 84741
Phone# 435-644-4905
Fax# 435-644-2052

TO: Commissioner Dirk Clayson
FROM: John Livingston, Budget and Finance Officer, Kane County, Utah
DATE: April 10, 2017
RE: Service District Training at Kane County, Utah

Commissioner Clayson: Per your request, I prepared a brief summary of my efforts to contact all members of the all the Service Districts we have operating within our county. Here is a timeline since August 29, 2016.

August 29 to October 28, 2016: Contact all members of Service Districts to update slate of officers and contact information; discuss status of each district with Lt. governor office, as well as meeting with Jeremy Walker in his office in SLC.

TASKS: October 13th -Linda Millett, my assistant, sent Little Manual, and prepared and sent introduction letter describing the topics Service District members need annual training in: to all members. Multiple phone contacts to Service Districts.

November 1 to December 30, 2016: Update County records of Service Districts; complete Local Government training myself on state website; send copy of Little Manual to all Service District members; schedule 2 separate 3 hour training sessions by Ryan Roberts (Utah State Auditor Office) and Legrand Bitter (Utah Association of Special Districts) for Thursday, Jan. 12, 2017 at Kane County commission chambers.

TASKS: Nov. 1; Nov. 2; Nov. 4::more data to individual districts::
Dec. 12th: Emailed all members to RSVP for training times for Jan. 12th training meeting. I attended 2 Service district meetings. Multiple phone contacts to Service Districts.

January 4 - March 31, 2017

TASKS: I attended 3 Service district meetings. I discussed the need for a Procurement Policy when I attended both training sessions on Jan. 12th. Reviewed individual Service District status with Legrand Bitter and Ryan Roberts at 10:00 a.m., Jan. 12th, 2017. Multiple phone contacts to Service Districts.

Best Regards,

A handwritten signature in blue ink, appearing to read "John Livingston", is written over the "Best Regards," text.

John Livingston, Kane County Budget Officer