

# WHAT'S UP WITH KUUNC?



**T**he Kansas Rural Water Association is keenly interested in ensuring that local water and wastewater systems are not bothered with any more utility locate requests than are necessary. That has been and will continue to be KRWA's goal. That is also one of my goals as a board member of the Kansas Underground Utility Notification Center (KUUNC).

Many interesting developments have taken place in the last quarter of 2013 that have ultimately not affected the new KUUNC. The "not" is not a typo. For most of 2013, several actions were initiated and very few, if any, have been completed. As I explain these developments, please keep in mind that I welcome any feedback and encourage readers to engage in dialogue with the KUUNC Board members and others in the industry.

In 2008, the Kansas Legislature mandated that all utilities become members of a Notification Center and that a governing body be created to provide guidance. Kansas One Call (KOC) had operated the notification center since 1993; KOC argued that it (the KOC) was the Notification Center, but a Supreme Court ruling stated otherwise: *"Despite the lack of crystal clear language, the statutory scheme does not support the heart of One-Call's argument that One-Call is the notification center. Instead, it is readily apparent that the notification center is a governmental contractor that is currently operated by One-Call."* The Supreme Court decision further states: *"A more logical reading of the entire KUUDPA (Kansas Underground Utility Damage*

*Prevention Act) would require the notification center to solicit proposals from companies like One-Call to determine its operator. The trial court correctly concluded that One-Call is an entity distinct from the notification center."*

Thus, it was determined that there was no longer a "Notification Center governing board." There has been some delay, but finally in 2013 the KUUNC Board was appointed. The Board began holding meetings to create by-laws and get other organizational matters attended to. Through a great deal of consternation and questioning, by-laws were finally adopted by the Board and currently await approval by the Kansas Corporation Commission. In the meantime, the question of "whether KUUNC is a State agency" has been asked, dissected and consequently NOT been answered. The statute states that KUUNC is a "public agency" and while it may have been legislative intent that KUUNC be a "State agency", there has been a great deal of resistance to progressing until that question is answered. So, where do we go from here?

The Kansas Corporation Commission (KCC) directed the KUUNC Board to continue on with business, finalizing by-laws, developing operational policies for a contractor in the

Call Center and to restructure a rate schedule to allow some funding to the new "agency". However, with no funds to retain legal counsel, the directives slowed to a snail's pace. It wasn't until KRWA provided and paid for legal advice by KRWA counsel Gary Hanson, of Stumbo Hanson, LLP that by-law corrections were finalized and approved by the Board. The Board asked for legal advice from the KCC

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but that was declined due to possibilities of future conflict. The Attorney General's office has still not been queried about whether it can provide counsel to the KUUNC and it may eventually come to that, but for now, things are moving along.

### How exactly are things moving along? In short – at a snail's pace

Underground utility locate notifications in Kansas are currently provided by a call center in Wichita, KS. The workers there who answer the calls and send out the notices are employed by One Call Concepts (OCC), a private company based in Milwaukee, WI. And this is where simplicity stops. Now it gets tricky, so pay attention. OCC is a sub-contractor to Kansas One Call, a private, non-profit organization. KOC is governed by an elected Board and is funded by membership dues and ticket charges. KOC has done quite well financially over the years and as I understand it, has considerable assets and no liabilities. It has three full-time employees. KOC sub-leases office space for those employees from OCC in the call center. On the other hand, the newly formed KUUNC is a “public agency” that was charged by the Legislature to oversee notification services in Kansas. Composition of the Board represents the various industry sectors (13 in all, 11 directors and two advisers). KUUNC presently has no funding, no assets, and no staff but arguably a great deal of liability. Since directed by the Kansas Legislature to provide notification services to Kansas, the amount of liability could be considered immeasurable. However, State Law also provided oversight to KUUNC and notification services by enabling the KCC to oversee it. The Legislature, however, did not provide any means of counsel or assistance. So, in the acronym-laden chain-of-command (for anyone who is into that sort of thing) the notification services in Kansas are provided by: the KCC-KUUNC-KOC-OCC. Whew!

Logically, the next step, after adopting by-laws and having them approved...which is still pending...would be the generation of a RFP to secure a contractor to provide day-to-day services in the call center. KOC is currently providing operation of the call center (by way of their sub-contractor, OCC) but they are the interim contractor. Currently, there is no notification service provider under contract with the KUUNC or the State to provide notification services. However, creating a RFP that conforms with State procurement processes is not easy and takes more experience and knowledge than anyone on the KUUNC Board has. But, since the KUUNC has no funds or funding, it is not possible to hire an attorney to create one. And this is where WaterOne

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(Johnson County) has stepped in. Darci Meese and the WaterOne legal department offered to create a RFP months ago, in late summer, 2013. That offer was never considered as the KOC brought in their own new agreement for operation of the call center. The KCC then suggested an amendment to the current

legislation which would essentially abolish the KUUNC. However, a final draft of that amendment never materialized. I believe it had some short-comings. The draft legislation included designating a “not-for-profit corporation” to operate a notification center. The draft amendment by KCC also would have required that the new private corporation be subject to Kansas Open Meetings Act and Kansas Open Records Act. It also would have required all utilities to become members. The State of Kansas cannot require private companies to comply with KORA/KOMA and cannot require other private entities to become members. Those two inclusions in the amendment alone seem to disqualify any private not-for-profit corporation by conflicting with existing Kansas laws. During a meeting at KCC between KCC staff and stakeholders, the KRWA, the League of Kansas Municipalities and WaterOne stated opposition to amending state law. WaterOne again offered to



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provide assistance in drafting a RFP. A more recent email from KCC staff indicates KCC was not going to support amending existing statutes at this time.

Many things need to be taken into consideration in a RFP, e.g., what is the average maximum wait-time for a caller? No excavator wants to call a notification center and wait on hold for several minutes until they can complete their request. Also, Kansas has an on-line notification service that was developed and is maintained by OCC. It allows a user to not only log in and request a locate, but to also log in and manage a utility's notification boundary. Any new notification service provider will have to provide comparable services. Ensuring that these and other essential items are included in a RFP is a logical argument for employing counsel. Hence, accepting the WaterOne legal department's offer to create one seems appropriate.

It seems that all other paths for the KUUNC board to go down have been closed. Institutionalizing the interim call center operator by extending their contract without using State procurement proceedings does not comply with state law. There was no appetite by stakeholders to amend existing legislation. But ignoring the issues in hopes that they just “go away” will be of no benefit. The next course of

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action by the KUUNC seems clear. In my opinion, the KUUNC needs to follow the order of the Kansas Supreme Court, and present state statutes, by issuing a RFP to secure a notification center operator to serve the best interests of the citizens of Kansas.

**Attend the conference; learn about ITIC and IMAP**

The KRWA annual Conference will have many beneficial sessions for operators, managers and bookkeepers. If you would like to

learn more about locating utilities in Kansas, especially about on-line locating and system management, attend the “Online One-Call Services: How to ITIC and IMAP” session on Thursday morning, March 27. David Butler with OCC will be the presenter. He can demonstrate the service and explain how utilities can sign up.

*Pete Koenig is GPS/GIS Mapping Coordinator at KRWA where he has been employed since 2004. He also has worked on KAN STEP projects and has been involved in other Association activities.*



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