

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LEGAL QUALIFICATIONS OF REBECKAH)
JOHNSTON TO CONTINUE TO SERVE AS A) CASE NO. 2012-00449
MEMBER OF THE BOARD OF COMMISSIONERS)
OF SANDY HOOK WATER DISTRICT)

ORDER

Sandy Hook Water District ("Sandy Hook District"), a water district organized pursuant to KRS Chapter 74, owns and operates water production and distribution facilities that serve approximately 1,223 customers in Elliott County, Kentucky. It is a utility subject to Commission jurisdiction.¹ Sandy Hook District is administered by a five-member board of commissioners that controls and manages the affairs of the district.

KRS 74.455(1) provides:

From and after the creation and establishment of a water district and the appointment of water commissioners to manage the affairs of the district, and following the acquisition or construction by any duly created and established water district of a public water system, and the consequent establishment of regulatory jurisdiction over such water district by the Public Service Commission of Kentucky, the Public Service Commission may remove any water commissioner from his office for good cause, including, inter alia, incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office, including without limiting the generality of the foregoing, failure to comply with rules, regulations, and orders issued by the Public Service Commission.²

¹ KRS 278.015.

² See also KRS 74.020 ("A commissioner may be removed from office as provided by KRS 65.007 or 74.455.")

KRS 74.020(8) provides:

(a) At least once annually, the Public Service Commission shall provide or cause to be conducted a program of instruction, consisting of at least twelve (12) hours of instruction, that is intended to train newly appointed commissioners in the laws governing the management and operation of water districts and other subjects that the Public Service Commission deems appropriate. The commission may charge a reasonable registration fee to recover the cost of the programs and may accredit programs of instruction that are conducted by other persons or entities and that the commission deems equivalent to its program of instruction.

(b) Within twelve (12) months of his or her initial appointment, each commissioner shall complete the program of instruction described in paragraph (a) of this subsection. Any commissioner who fails to complete the program within twelve (12) months of his or her initial appointment shall forfeit his or her office and all right to act in discharge of the duties of the office. A commissioner required to attend a program under this subsection shall be reimbursed for the cost of instruction by his or her water district.

Rebeckah Johnston is a member of Sandy Hook District's Board of Commissioners. The Elliott County Judge/Executive has advised the Commission that Ms. Johnston was appointed to Sandy Hook District's Board of Commissioners on or about July 1, 2011.³ Judge/Executive Fanin alleges that Ms. Johnston has not completed the training that KRS 74.020(8)(b) requires within the required time period. Since Ms. Johnston's appointment to Sandy Hook District's Board of Commissioners on or about July 1, 2011, the Commission has conducted and completed four programs of instruction to train newly appointed water district commissioners in accordance with KRS 74.020(8). Commission records do not reflect, as of October 1, 2012, that Ms. Johnston has attended a program of instruction for newly appointed commissioners.

³ Letter from Carl Fanin, Elliot County Judge/Executive, to Jeff Derouen, Executive Director, Public Service Commission of Kentucky (Sept. 21, 2012) (copy attached to this Order as Exhibit A).

In light of the representations of the Elliott County Judge/Executive and the absence of any record of Ms. Johnston's completion of any of the Commission's programs of instruction for newly appointed commissioners within one year of her appointment, the Commission finds prima facie evidence that Ms. Johnston has not complied with KRS 74.020(8) and is disqualified from continued service as a member of Sandy Hook District's Board of Commissioners and that, as a result of this disqualification, good cause exists for her removal from that Board for neglect of duty.

IT IS THEREFORE ORDERED that:

1. Pursuant to KRS 74.455, this proceeding is initiated to determine whether Ms. Johnson has complied with KRS 74.020(8) and whether she is qualified to continue to serve as a member of Sandy Hook District's Board of Commissioners.

2. Within 10 days of service of this Order, Ms. Johnson shall file with the Commission a written response to this Order and shall specifically admit or deny the allegation that she has not completed a Commission program of instruction for newly appointed commissioners within one year of the date of her appointment as a commissioner of Sandy Hook District.

3. Unless she waives her right to a public hearing in this matter, Ms. Johnston shall appear at the Commission's offices at 211 Sower Boulevard on November 13, 2012, at 10:00 a.m. Eastern Standard Time for a public hearing on whether she has completed Commission's program of instruction for newly appointed commissioners within one year of the date of her appointment as a commissioner of Sandy Hook District and whether, if she has not completed the required training within the time period that KRS 74.020(8) specifies she is disqualified from continued service


as a member of Sandy Hook District's Board of Commissioners and must be removed from that Board.

4. Pursuant to KRS 278.080, James Wood is designated as hearing examiner to conduct the scheduled hearing in this matter and to perform all actions necessary to ensure the orderly conduct of this hearing, to include administering oaths, receiving evidence, and ruling on motions and objections presented at this hearing.

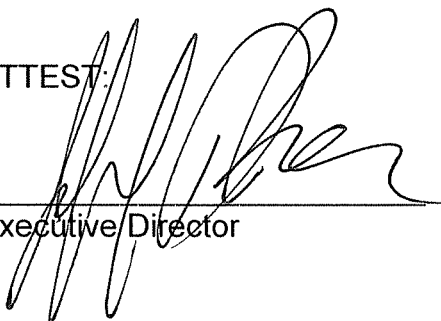
5. A copy of this Order shall be served upon the County Judge/Executive of Elliot County.

6. The official record of these proceedings shall be by video only.

By the Commission

ENTERED	
OCT 11 2012	
KENTUCKY PUBLIC SERVICE COMMISSION	

ATTEST:



Executive Director

Case No. 2012-00449



CARL FANNIN
ELLIOTT COUNTY
JUDGE EXECUTIVE
P.O. BOX 710
SANDY HOOK, KY 41171

Phone: (606) 738-5335 or (606) 738-5826 • Fax: (606) 738-5627

REC'D

SEP 24 2012

PUBLIC SERVICE
COMMISSION

PUBLIC SERVICE COMMISSION
EXECUTIVE DIRECTOR
JEFF DEROUEN
P.O. Box 615
Frankfort, KY. 40602-0615

SEPTEMBER 21, 2012

Dear Mr. Derouen,

On June 1, 2011, Rebeckah Johnston was appointed as a new member to the Sandy Hook Water District Board. According to KRS 74.020(8), a newly appointed member must receive appropriate training provided by the Public Service Commission within 12 months of the date of the appointment, or the member forfeits the right to hold such office. Ms. Johnston has failed to attend any training since her appointment more than 14 months ago. The County Attorney will not bring an action in circuit court to have Ms. Johnston removed, because she also serves as his secretary. Because of this conflict, I scheduled a public hearing to determine whether Ms. Johnston should be removed from the Sandy Hook Water Board pursuant to KRS 65.007. The hearing was held on September 20, 2012.

At the hearing, Ms. Johnston was given the opportunity to present her argument to the fiscal court. Ms. Johnston stated that she could not attend some of the meetings available because they were not available to new appointees. In response, I introduced a list, provided to me by Jerry Weutcher of the Public Service Commission, of all of the trainings available to new board members during the 12 month period. There were four training opportunities available, none of which Mrs. Johnston attended. Ms. Johnston admitted at the hearing that she was not in compliance with the statute. After testimony, the fiscal court voted to table the removal of Ms. Johnston. Ms. Johnston has since scheduled to attend training in October of 2012.

KRS 74.020(8)(b) unambiguously states that Mrs. Johnston, by failing to attend PSC training within the 12 month period, "shall forfeit...her office and all right to act in discharge of the duties of the office." Under KRS 446.010(39), "shall" means "mandatory." Such penalty is unconditional, and no one, whether Fiscal Court, County Attorney, or Ms. Johnston, can remedy the forfeiture through subsequent compliance. Pursuant to KRS 74.455, the Public Service Commission has the right to remove a Water Board Commissioner "for good cause, including, inter alia, incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office, including without limiting the generality of the foregoing, failure to comply with rules, regulations, and orders issued by the Public Service Commission." Therefore, I respectfully request the Personal Service Commission to hold a hearing in



CARL FANNIN
ELLIOTT COUNTY
JUDGE EXECUTIVE
P.O. BOX 710
SANDY HOOK, KY 41171

Phone: (606) 738-5335 or (606) 738-5826 • Fax: (606) 738-5627

compliance with KRS 74.455 to determine whether Ms. Johnston should be removed for failing to meet the qualifications of her office.

If you have any questions, please do not hesitate to contact me or my Deputy, Darren Fannin. Thank you.

Sincerely yours,

Judge Executive
Carl Fannin

cc: Rebeckah Johnston

Carl Fannin
Judge Executive
Elliott County Judge Executive
PO Box 710
Sandy Hook, KENTUCKY 41171

Rebeckah Johnston
1646 KY 557
Sandy Hook, KENTUCKY 41171

Rebeckah Johnston
Sandy Hook Water District
P. O. Box 726
Sandy Hook, KY 41171

John D Lewis, Jr.
Elliott County Attorney
113 Main Street
P.O. Box 796
Sandy Hook, KENTUCKY 41171