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Mark David Goss
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January 31, 2007

Mr. Thomas Kidd
51 Maple Road
Harold, Kentucky 41635

Dear Mr. Kidd:

This letter responds to your telephone inquiries regarding the legal status of the Sandy Valley Water Commission's Board of Commissioners.

In your telephone conversations with Commission Staff, you presented the following facts:

Sandy Valley Water District, a water district organized pursuant to KRS Chapter 74, owns and operates facilities that distribute water to 2,335 customers in Floyd and Pike counties, Kentucky.

A five-member Board of Commissioners operates Sandy Valley Water District. These members and the expiration date of their terms are:

Joseph Jacobs – October 23, 2005
Oliver Blackburn – March 31, 2007
Jeff Anderson – August 31, 2007
Tom Bow – October 30, 2005
Thomas Kidd – November 1, 2008¹

Neither the Floyd County nor Pike County Judge/Executives has reappointed Mr. Jacobs or Mr. Bow or appointed successors to them.

¹ In your telephone conversations with Commission Staff, you stated that the terms of all Sandy Valley Water District commissioners, excluding yours, have expired. This statement conflicts with the information that Sandy Valley Water District provided to the Commission in its Annual Report to the Public Service Commission for the Year Ended December 31, 2004. The expiration dates listed in that report are shown above.

The Sandy Valley Water District Board of Commissioners has not met since April 2006. Sandy Valley Water District is continuing to transact business despite the lack of board meetings. Chairman Joseph Jacobs is authorizing payments and executing checks on behalf of the Sandy Valley Water District Board of Commissioners. On his own authority Chairman Jacobs directed the payment of bonuses to water district employees and an increase in employee wage rates.

You pose the following questions: (1) May the Board of Commissioners continue to meet and act on the water district's business even when the terms of two of its members have expired? (2) May Sandy Valley Water District continue to transact business in the absence of meetings of its Board of Commissioners?

As to your first question, Sandy Valley Water District's Board of Commissioners can continue to meet and act even though the terms of two of its five commissioners have expired. KRS 65.008(2) provides that "appointed members of district governing bodies shall serve until their successors are appointed and qualified."² Therefore, all members of the board can continue to attend and vote upon matters before the Board of Commissioners. Moreover, the language of KRS 65.008(2) **imposes an affirmative duty upon the existing member to continue to perform his or her duties until a successor is appointed and approved or the member resigns or dies.**

As to your second question, Sandy Valley Water District may not transact any business in the absence of meetings of its Board of Commissioners. A water district's board of commissioners administers the water district and "control[s] and manage[s] the affairs of the district." KRS 74.020(1). Where a statute confers authority upon three or more public officers, the statute must be construed as giving such authority to a majority of the officers. KRS 446.050. See also OAG 69-311. One member of a board of commissioners is not sufficient to transact any business. A quorum of the members must be present. Based upon the facts set forth above, it appears that three members of the Sandy Valley Water District Board of Commissioners must be present to establish

² Commission Staff notes that the Sandy Valley Water District Board of Commissioners has an affirmative duty to notify the appropriate county judge/executive of any pending vacancy. KRS 65.008(1) provides:

At least sixty (60) days before the expiration of the term of office of an appointed member of a district's governing body, the district shall notify the appointing authority of the forthcoming expiration of the term of the appointed member of the district's governing body.

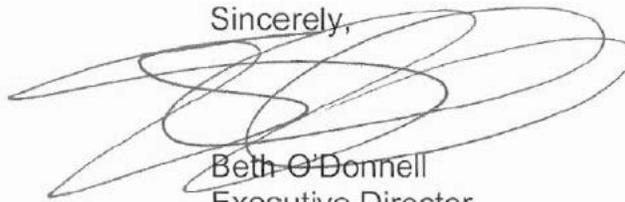
If the appointing and approving authorities fail to fill the vacancy within 90 days of the expiration of the term, KRS 74.020(4) requires the Public Service Commission to fill the vacancy. See Mountain Water District, Case No. 2001-00379 (Ky.PSC Dec. 7, 2001) at 3.

a quorum.³ Moreover, when these members meet to transact business, the meetings must generally be open to the public. See KRS 61.820. Any act that has been authorized without a vote of a quorum of commissioners in a public meeting is voidable.

Please also note that KRS Chapter 74 provides a specific procedure for the payment of water district funds. KRS 74.050 states that the "treasurer of the commission shall pay out the funds of the commission only upon presentation of warrants signed by the chairman and countersigned by the secretary of the commission." Any payments that are made without adhering to this procedure are subject to legal challenge.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Deputy General Counsel, at (502) 564-3940, Extension 259.

Sincerely,



Beth O'Donnell
Executive Director

cc: **Sandy Valley Water District**
Joseph Jacobs
Oliver Blackburn
Jeff Anderson
Tom Bow

³ When determining the number of commissioners necessary to establish a quorum, those commissioners whose term has expired must be considered. See OAG 90-119 ("[I]n computing the quorum those persons, properly appointed, who are presently functioning in a 'holdover' capacity are to be counted as members of the group and may be counted to arrive at the quorum (the minimum number present at the meeting to lawfully transact business.)")