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August 13, 2012

Hon. Darren Fannin
Deputy County Judge Executive
Post Office Box 710
Sandy Hook, Kentucky 41171

Re: Rebeckah Johnson

PSC STAFF OPINION 2012-017

Dear Deputy Judge Fannin:

Commission Staff acknowledges receipt of your letter of August 8, 2012 in which you requested information regarding the attendance of Ms. Rebeckah Johnson at training that the Public Service Commission conducts for new water district commissioners.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and is not binding on the Commission should the issues herein be formally presented for Commission resolution.

A review of Commission records does not indicate that any person by the name of "Rebeckah Johnson" or "Rebecca Johnson" has attended water management training for new water district commissioners in 2011 or 2012.

As to whether Ms. Johnson can be removed from office for failing to attend the required training, Commission Staff cannot provide a definitive response. KRS 74.020(8) states:

- (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.

If more than 12 months have elapsed since Ms. Johnson's appointment, KRS 74.020(8) suggests that she has forfeited her office and action pursuant to KRS 65.007 or KRS 74.455. For your reference, a copy of these statutes are enclosed.

As Sandy Hook Water District has not provided the Commission with a copy of her appointment, Commission Staff cannot verify the date of Ms. Johnson's appointment. The only record available to Commission Staff, Sandy Hook Water District's Annual Report for the year ending December 31, 2011, indicates that Ms. Johnson's term ends on June 1, 2015. It does not indicate the date of her appointment. Commission Staff, therefore, cannot advise as to whether the forfeiture of office provision set forth in KRS 74.020(8)(b) is applicable.

Questions concerning this opinion should be directed to Gerald Wuetcher, Executive Advisor, at (502) 564-3940, Extension 259.

Sincerely,



Jeff Derouen
Executive Director

gw
Enclosures

65.007 Removal of appointed member of special district governing body -- Hearing -- Appeal.

- (1) Unless otherwise provided by state law, an appointed member of the governing body of a special district may be removed from office by the appointing authority after a hearing with notice as required by KRS Chapter 424 for inefficiency, neglect of duty, malfeasance or conflict of interest. The hearing shall be initiated and chaired by the appointing authority, who shall prepare a written statement setting forth the reasons for removal. The member to be removed shall be notified of his proposed removal and the reasons therefor by registered mail sent to his last known address at least ten (10) days prior to the hearing. The person to be removed may employ counsel to represent him. A record of the hearing shall be made by the appointing authority.
- (2) Where the removal of an appointed member of a special district governing body is by the county judge/executive pursuant to subsection (1) of this section, the removal shall be subject to the approval of the fiscal court.
- (3) A member removed pursuant to this section may appeal, within ten (10) days of the rendering of the decision or the approval of the fiscal court if required, to the Circuit Court of the county of the appointing authority. The scope of the appeal shall be limited to whether the appointing authority or the fiscal court abused their discretion in removing the member.

Effective: July 15, 1980

History: Created 1980 Ky. Acts ch. 18, sec. 1, effective July 15, 1980.

74.455 Removal of district water commissioner -- Causes.

- (1) 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) No such order of removal with respect to any water commissioner shall be entered by the Public Service Commission until a public hearing on the merits with reference to such matter has been held by the commission, at which hearing the water commissioner proposed to be removed from office shall be afforded the opportunity to appear, either pro se, or by counsel and file briefs, memoranda and motions, cross-examine witnesses, examine exhibits, and present evidence, both orally and in writing. All such orders of removal entered by the Public Service Commission shall be final and shall not be subject to appeal. Any water commissioner may waive such public hearing, in which case an order on removal may be forthwith entered by the commission.
- (3) Using procedures of this section the Public Service Commission may also request the removal of directors, trustees or other governing persons of water associations in like manner.

History: Created 1972 Ky. Acts ch. 310, sec. 3.