

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST TO FILL EXISTING VACANCIES ON )  
THE BOARD OF COMMISSIONERS OF LETCHER ) CASE NO. 2008-00395  
COUNTY WATER AND SEWER COMMISSION )

O R D E R

On September 23, 2008, Letcher County Judge/Executive Jim Ward applied to the Commission to fill two vacancies on Letcher County Water District's ("Letcher District") Board of Commissioners, which became vacant due to the expiration of current members' terms on June 1, 2008.<sup>1</sup> Judge Ward and Letcher County Fiscal Court have recommended that Phillip Back and Billy Stamper be appointed to fill the vacant positions.<sup>2</sup> On the same day, Jim Murtaugh, Letcher District's Operations Manager and Interim Executive Director,<sup>3</sup> requested that the Commission appoint Seth Long and Donald Profitt to fill the vacant positions.

Pursuant to KRS 74.020(1)(a), a county judge/executive appoints water district commissioners with the approval of the county's fiscal court. KRS 74.020(4), however, provides that the Commission shall fill a vacancy on the board of commissioners "if,

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<sup>1</sup> Judge Ward wrote the Commission to advise of the vacancies and to request Commission assistance in filling them. The Commission will consider this letter as an application to make appointments to fill the vacancies.

<sup>2</sup> Letcher County Fiscal Court Resolution No. 08-017.

<sup>3</sup> See [http://psc.ky.gov/utility\\_master/ReadOnlyAddress.aspx](http://psc.ky.gov/utility_master/ReadOnlyAddress.aspx) (last visited Oct. 27, 2008).

within ninety (90) days following the expiration of the term, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.”

As the term of each Letcher District commissioner expired on June 30, 2008,<sup>4</sup> and the positions have been vacant for more than 90 days, the Commission has the statutory duty and the exclusive authority to fill the vacant positions.<sup>5</sup> While a county judge/executive and a county fiscal court may reach agreement on the vacant position, they lack authority to fill the vacancy once it has remained unfilled for more than 90 days. Any action on their part to appoint and approve a candidate at that time has limited legal effect and constitutes only a recommendation to the Commission.

Based upon the above, the Commission finds that a case should be established to consider the application and to select the appropriate persons to fill the present vacancies on Letcher District’s Board of Commissioners.

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<sup>4</sup> Annual Report of Letcher County Water District to the Kentucky Public Service Commission for the Year Ended December 31, 2007 at 6.

<sup>5</sup> KRS 74.020(4) provides:

Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding the provisions of KRS 67.710, a vacancy resulting from the expiration of a term shall be filled by the Public Service Commission if, within ninety (90) days following the expiration of the term, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

See *also* Case No. 2007-00493, Request for Assistance in the Appointment of Breathitt County Water District Commissioners (Ky. PSC Mar. 20, 2008).

IT IS THEREFORE ORDERED that:

1. This case is established to fill the two vacancies on Letcher District's Board of Commissioners.

2. Members of Letcher County Fiscal Court,<sup>6</sup> Judge Ward, and Letcher District are made parties to this case.

3. Any party filing documents with the Commission shall serve a copy of those documents upon all other parties.

4. Service of any document or pleading shall be made in accordance with Administrative Regulation 807 KAR 5:001, Section 3(7), and Kentucky Civil Rule 5.02.

5. Within 20 days of this Order, Judge Ward shall file with the Commission the original and 6 copies of the information listed in Appendix A, with a copy to all parties of record.

6. Within 20 days of this Order, Letcher District shall file with the Commission the original and 6 copies of the information listed in Appendix B, with a copy to all parties of record.

7. a. Responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or

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<sup>6</sup> The current members of Letcher County Fiscal Court are: Keith Adams, Archie Banks, Wayne Fleming, Codell Gibson, and Bob Lewis.

person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. Any party shall make timely amendment to any prior responses if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any requests to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. Careful attention should be given to copied material to ensure that it is legible. When the requested information has been previously provided in this proceeding in the requested format, reference may be made to the specific location of that information in responding to this request.

8. Any party who wishes to nominate a person to fill the vacancy shall submit its nomination to the Commission in writing within 20 days of the date of this Order.

Done at Frankfort, Kentucky, this 6th day of November, 2008.

By the Commission

ATTEST:

  
Executive Director

## APPENDIX A

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2008-00395 DATED NOVEMBER 6, 2008

1. List the name of each of the current Letcher District commissioners and the date on which his or her term expires.

2. List the name of each Letcher District commissioner who has served on Letcher District's Board of Commissioners since July 1, 2004 and the dates of his or her service as a commissioner.

3. Provide the following information about Donald Profitt, Jack Martin, Pat Gish, Jim Flynn, Lonnie Buchanan, Seth Long, Sherill Slone, and Fred Webb:

a. The date on which he was appointed as a member to Letcher District's Board of Commissioners.

b. The name of the Letcher County Judge/Executive who appointed him to Letcher District's Board of Commissioners.

c. The date(s) on which Letcher County Fiscal Court approved his appointment(s) to Letcher District's Board of Commissioners.

d. If he is no longer serving as a member of Letcher District's Board of Commissioners, the date he ceased to serve as a member.

e. If his position was vacated, the reason why the position was vacated.

4. Provide each order of the Letcher County Judge/Executive in which one or more of the persons listed in Item 3 was appointed to Letcher District's Board of Commissioners.

5. Provide the minutes of each meeting of Letcher County Fiscal Court in which the appointment of one or more of the persons listed in Item 3 for member of Letcher County Water District was considered.

6. For Phillip Back:
- a. Provide his curriculum vitae.
  - b. State his date of birth.
  - c. State his current address.
  - d. State whether he has ever been convicted of violating any law (other than minor traffic offenses). If yes, list the offense(s) for which he was convicted, the date of the conviction, and the court in which he appeared.
  - e. State whether he resides in Letcher District's territory.
  - f. Describe his educational background.
  - g. Describe his experience in operating or managing a water utility.
  - h. Describe his experience in managing or operating organizations similar to a water utility.
  - i. List all positions that he currently holds with any local, state, or federal governmental entity.
  - j. List and provide a copy of all contracts to provide goods or services into which he has ever entered with Letcher District.
  - k. List all business transactions that he has had with Letcher District in a personal or non-official capacity.

l. State whether he or his employer currently provides goods or services to Letcher District or has, within the last 12 months, bid on proposed contracts to provide goods or services to Letcher District.

m. State whether he has any relative(s) (e.g., parent, spouse, sibling, child, grandchild) whom Letcher District employs. If yes, identify the relative.

n. List all courses of water district management training that he has attended since January 1, 2003.

7. For Billy Stamper:

a. Provide his curriculum vitae.

b. State his date of birth.

c. State his current address.

d. State whether he has ever been convicted of violating any law (other than minor traffic offenses). If yes, list the offense(s) for which he was convicted, the date of the conviction, and the court in which he appeared.

e. State whether he resides in Letcher District's territory.

f. Describe his educational background.

g. Describe his experience in operating or managing a water utility.

h. Describe his experience in managing or operating organizations similar to a water utility.

i. List all positions that he currently holds with any local, state, or federal governmental entity.

j. List and provide a copy of all contracts to provide goods or services into which he has ever entered with Letcher District.

k. List all business transactions that he has had with Letcher District in a personal or non-official capacity.

l. State whether he or his employer currently provides goods or services to Letcher District or has, within the last 12 months, bid on proposed contracts to provide goods or services to Letcher District.

m. State whether he has any relative(s) (e.g., parent, spouse, sibling, child, grandchild) whom Letcher District employs. If yes, identify the relative.

n. List all courses of water district management training that he has attended since January 1, 2003.

8. Provide a map of Letcher District's territory.

9. Provide all ordinances of Letcher County Fiscal Court and orders of Letcher County Judge/Executives that establish Letcher District's territorial boundaries.

10. Provide the minutes of each meeting of Letcher County Fiscal Court since May 19, 1997 in which Letcher County Fiscal Court considered any appointment to Letcher District's Board of Commissioners.

## APPENDIX B

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2008-00395 DATED NOVEMBER 6, 2008

1. List the name of each of the current Letcher District commissioners and the date on which his or her term expires.

2. List the name of each Letcher District commissioner who has served on Letcher District's Board of Commissioners since July 1, 2004 and the dates of his or her service as a commissioner.

3. Provide the following information about Donald Profitt, Jack Martin, Pat Gish, Jim Flynn, Lonnie Buchanan, and Fred Webb:

a. The date on which he was appointed as a member to Letcher District's Board of Commissioners.

b. The name of the Letcher County Judge/Executive who appointed him to Letcher District's Board of Commissioners.

c. The date(s) on which Letcher County Fiscal Court approved his appointment(s) to Letcher District's Board of Commissioners.

d. If he is no longer serving as a member of Letcher District's Board of Commissioners, the date he ceased to serve as a member.

e. If his position was vacated, the reason why the position was vacated.

4. For Seth Long:

a. Provide his curriculum vitae.

b. State his date of birth.

- c. State his current address.
- d. State whether he has ever been convicted of violating any law (other than minor traffic offenses). If yes, list the offense(s) for which he was convicted, the date of the conviction, and the court in which he appeared.
- e. State whether he resides in Letcher District's territory.
- f. Describe his educational background.
- g. Describe his experience in operating or managing a water utility.
- h. Describe his experience in managing or operating organizations similar to a water utility.
- i. List all positions that he currently holds with any local, state, or federal governmental entity.
- j. List and provide a copy of all contracts to provide goods or services into which he has ever entered with Letcher District.
- k. List all business transactions that he has had with Letcher District in a personal or non-official capacity.
- l. State whether he or his employer currently provides goods or services to Letcher District or has, within the last 12 months, bid on proposed contracts to provide goods or services to Letcher District.
- m. State whether he has any relative(s) (e.g., parent, spouse, sibling, child, grandchild) whom Letcher District employs. If yes, identify the relative.
- n. List all courses of water district management training that he has attended since January 1, 2003.

5. For Donald Proffitt:

- a. Provide his curriculum vitae.
- b. State his date of birth.
- c. State his current address.
- d. State whether he has ever been convicted of violating any law (other than minor traffic offenses). If yes, list the offense(s) for which he was convicted, the date of the conviction, and the court in which he appeared.
- e. State whether he resides in Letcher District's territory.
- f. Describe his educational background.
- g. Describe his experience in operating or managing a water utility.
- h. Describe his experience in managing or operating organizations similar to a water utility.
- i. List all positions that he currently holds with any local, state, or federal governmental entity.
- j. List and provide a copy of all contracts to provide goods or services into which he has ever entered with Letcher District.
- k. List all business transactions that he has had with Letcher District in a personal or non-official capacity.
- l. State whether he or his employer currently provides goods or services to Letcher District or has, within the last 12 months, bid on proposed contracts to provide goods or services to Letcher District.
- m. State whether he has any relative(s) (e.g., parent, spouse, sibling, child, grandchild) whom Letcher District employs. If yes, identify the relative.

n. List all courses of water district management training that he has attended since January 1, 2003.

6. For Phillip Back:

a. List and provide a copy of all contracts to provide goods or services into which he has ever entered with Letcher District.

b. List all business transactions that he has had with Letcher District in a personal or non-official capacity.

c. State whether he or his employer currently provides goods or services to Letcher District or has, within the last 12 months, bid on proposed contracts to provide goods or services to Letcher District.

d. State whether he has any relative(s) (e.g., parent, spouse, sibling, child, grandchild) whom Letcher District employs. If yes, identify the relative.

7. For Billy Stamper:

a. List and provide a copy of all contracts to provide goods or services into which he has ever entered with Letcher District.

b. List all business transactions that he has had with Letcher District in a personal or non-official capacity.

c. State whether he or his employer currently provides goods or services to Letcher District or has, within the last 12 months, bid on proposed contracts to provide goods or services to Letcher District.

d. State whether he has any relative(s) (e.g., parent, spouse, sibling, child, grandchild) whom Letcher District employs. If yes, identify the relative.

8. Provide a map of Letcher District's territory.

9. Provide all ordinances of Letcher County Fiscal Court and orders of Letcher County Judge/Executives that establish Letcher District's territorial boundaries.