

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF A POSSIBLE VACANCY)	CASE NO.
OF THE BOARD OF COMMISSIONERS OF)	2019-00186
SANDY HOOK WATER DISTRICT)	

ORDER

On September 6, 2018, the Commission received a facsimile copy of the minutes of the July 17, 2018, meeting of the Elliott County Fiscal Court. The minutes had no cover letter and were placed in the non-case related correspondence file for Sandy Hook Water District (Sandy Hook District). The minutes stated that a motion was made to “separate and then vote to reappoint Estill Howard and Darren Fannin to Sandy Hook Water Board...” The minutes indicated that the motion carried. The minutes also indicated in a separate item that “[a] motion was made not to reappoint Darren Fannin to Sandy Hook Water Board...” The minutes indicate that this motion also carried.¹

Several months later in May of 2019, the Commission received a phone call from the County Judge/Executive of Elliott County inquiring about any action taken regarding the vacancy on the Sandy Hook Water District Board of Commissioners (Board). Further discussion revealed that the original purpose of providing the Commission with the July 17, 2018 minutes was to inform them of a potential vacancy on the Board.

KRS 74.020(4), which addresses the appointment of members to the boards of commissioners of water districts, states:

¹ A copy of the July 17, 2018, minutes is attached as Appendix A.

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 KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

Together, the July 17, 2018 Fiscal Court Minutes and the May 2019 phone call advised the Commission in writing and verbally that there was a possible vacancy pursuant to KRS 74.020(9)(a). In the event of a vacancy in excess of 90 days, the Commission has the statutory duty and exclusive authority to fill the position. While a county judge/executive and a county fiscal court may reach agreement on a candidate for 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 after that time constitutes only a recommendation to the Commission.²

Accordingly, the Commission finds that this proceeding should be initiated to determine whether a vacancy did exist for more than 90 days on the Sandy Hook Water District Board of Commissioners. The Commission will make the Sandy Hook District a party to this case and request that it provide certain information that is set forth in a data request attached hereto as Appendix B. The Commission will also request, by separate letter, that the Elliott Fiscal Court file copies of the meeting minutes of the Elliott County Fiscal Court appointing Darren Fannin and any other Commissioners whose terms may have expired and whose positions are now vacant.

² See Case No. 2008-00395, *Request to Fill Existing Vacancies on the Board of Commissioners of Letcher County Water and Sewer District* (Ky. PSC Jan. 28, 2009) at 4–5.

If the Commission finds that a vacancy or vacancies did exist for more than 90 days, we will then proceed to identify qualified candidates for appointment to those positions. To ensure that a wide range of candidates are considered, the Commission will permit all interested persons the opportunity to nominate candidates for the position(s) and will then determine whether each of these candidates meets the constitutional and statutory requirements for the office of water district commissioner and, of those candidates that meet these requirements, which is best suited to sit on the Board. The Commission also will direct that a copy of this Order be served upon the Elliott County Judge/Executive, the Elliott County Fiscal Court, the Elliott County Attorney, and Sandy Hook Water District's Board of Commissioners to notify them of this proceeding.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to determine whether a vacancy existed on the Sandy Hook Water District's Board of Commissioners for more than 90 days.
2. Sandy Hook Water District is made a party to this proceeding.
3. Any party filing documents with the Commission shall serve a copy of those documents upon all other parties.
4. a. The information requested in Appendix B to this Order is due within 14 days of entry of this Order. 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, with copies to all parties of record, and the original and five copies to the Commission.

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 the 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. A party shall make timely amendment to any prior response 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.

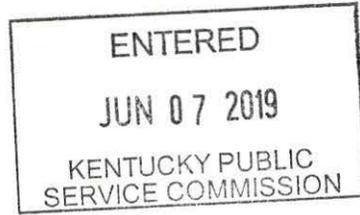
d. For any request to which a party refuses to furnish all or part of the requested information that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. A party filing a document containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the document so that personal information cannot be read.

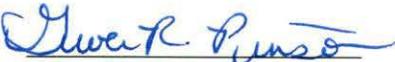
5. Service of all documents shall be made in accordance with 807 KAR 5:001, Section 4(8).

6. The Executive Director shall serve a copy of this Order upon the Elliott County Judge/Executive, the members of the Elliott County Fiscal Court, the Elliott County Attorney, and the Sandy Hook Water District's Board of Commissioners.

By the Commission



ATTEST:


Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2019-00186 DATED **JUN 07 2019**

THREE PAGES TO FOLLOW

RECEIVED

SEP 06 2018

PUBLIC SERVICE
COMMISSION

**ELLIOTT COUNTY FISCAL COURT
REGULAR MEETING
JULY 17TH, 2018**

THE REGULAR MEETING OF THE ELLIOTT COUNTY FISCAL COURT WAS HELD ON JULY 17TH, 2018 AT 6:00 P.M. AT THE ELLIOTT COUNTY COURTHOUSE WITH THE HONORABLE JUDGE EXECUTIVE CARL FANNIN PRESIDING.

The meeting was called to order at 6:01 P.M. The opening prayer and pledge was led by Michael Gilliam.

Those Present: Angie Porter
Cheyenne Holbrook
James Salyers
Michael Gilliam
Michelle Oney

Absent: Brian Dillon
Michael Dickerson
Patrick Trent

Comments from Citizens

A discussion was held with a concerned citizen (Greg Banas) about Greg Banas Road; Mr. Banas was worried that his neighbor may be in the process of renaming said road. Magistrate Brian Dillon was not present but fellow Magistrates reassured Mr. Banas that he would be notified of any changes.

V. Old Business

A motion was made to approve regular meeting minutes on June 19th, 2018 by James Salyers and seconded by Angie Porter. All voted aye. None opposed. **Motion carries.**

A motion was made to approve special meeting minutes on July 9th, 2018 by James Salyers and seconded by Angie Porter. All voted aye. None opposed. **Motion carries.**

A motion was made to separate and then vote to reappoint Estill Howard and Darren Fannin to Sandy Hook Water Board by Cheyenne Holbrook and seconded by Michelle Oney. Four voted aye. Michael Gilliam abstained. **Motion carries.**

A motion was made to reappoint Estill Howard to Sandy Hook Water Board for the term 6/1/2018 to 6/1/2022 by Michelle Oney and seconded by Cheyenne Holbrook. All voted aye. None opposed. **Motion carries.**

A motion was made not to reappoint Darren Fannin to Sandy Hook Water Board by Michelle Oney and seconded by Cheyenne Holbrook. Three voted aye. Two opposed. **Motion carries.**

A motion was made to reappoint Darlene Hill to Sandy Hook Water Board for the term 7/28/2018 to 7/28/2022 by Michelle Oney and seconded by Cheyenne Holbrook. All voted aye. None opposed. **Motion carries.**

A motion was made to table discussion/approval of tractor invoice and revised KACO lease agreement until next meeting by Michael Gilliam and seconded by James Salyers. All voted aye. None opposed. **Motion carries.**

V. New Business

A motion was made to acknowledge Lisa Wright's resignation as Elliott County Fiscal Court Clerk by James Salyers and seconded by Michelle Oney. All voted aye. None opposed. **Motion carries.**

A motion was made to approve Shyanna Howard as Elliott County Fiscal Court Clerk by James Salyers and seconded by Michelle Oney. All voted aye. None opposed. **Motion carries.**

A motion was made to approve Carl Fannin to sign CDBG grant request for payment by Angie Porter and seconded by James Salyers. All voted aye. None opposed. **Motion carries.**

A motion was made to approve Darren Fannin's last pay check retroactive to 7/13/2018 by James Salyers and seconded by Michael Gilliam. All voted aye. None opposed. **Motion carries.**

A motion was made to approve the Fourth Quarter Financials of the Elliott County Fiscal Court by Michael Gilliam and seconded by James Salyers. All voted aye. None opposed. **Motion carries.**

VI. Consideration of Bills and Transfers

A motion was made to approve interfund cash transfers (\$10,000 from 911 fund to road fund) by Michael Gilliam and seconded by James Salyers. All voted aye. None opposed. **Motion carries.**

A motion was made to approve to pay the paid and unpaid bills by James Salyers and seconded by Michael Gilliam. All voted aye. None opposed. **Motion carries.**

A discussion was held about adding Earthquake Insurance to the Elliott County Fiscal Court KACO policy. James Salyers made a motion to possibly approve addition later on. The motion was seconded by Michelle Oney. All voted aye. None opposed. **Motion carries.**

A motion was made to approve William Salyers's annual payment of \$1,664 by Michelle Oney and seconded by Angie Porter. All voted aye. None opposed. **Motion carries.**

A motion was made to approve to pay Janet Tackett .41 cents per mile (\$31.04) for her mileage of 75.7 miles round trip to a training held in Paintsville, KY by Michael Gilliam and seconded by Michelle Oney. All voted aye. None opposed. **Motion carries.**

Kaleb Adkins's payment of \$200 for welding axles on a trailer was already approved in paid and unpaid bills. **No motion necessary.**

VII. Communications from Other County Offices

A motion was made to approve monthly reports from Ambulance, Clerk, Laurel Gorge Cultural Heritage Center, Rocky Adkins Public Library, Sheriff, and Treasurer by Michelle Oney and seconded by Cheyenne Holbrook. All voted aye. None opposed. **Motion carries.**

VIII. Executive Session Opioid Litigation Update

IX. Adjournment

A motion was made to adjourn by Michelle Oney and seconded by Angie Porter. All voted aye. None opposed. **Motion carries.**

Submitted by: _____
Shyanna Howard/Elliott County Fiscal Court Clerk

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2019-00186 DATED **JUN 07 2019**

1. List the name of each current Sandy Hook Water District Commissioner and the date on which their term expires.
2. Provide a map of Sandy Hook Water District's territory.
3. Provide the ordinances and resolutions of Elliott County Fiscal Court that establish Sandy Hook Water District's territorial boundaries.
4. Provide all orders of the Elliott County Judge/Executive that address the appointments to the Sandy Hook Water District's current Board of Commissioners.
5. Provide all correspondence with the Elliott County Judge/Executive regarding the expiration of the term of Mr. Darren Fannin.
6. Explain the discrepancy contained in the July 17, 2018 Minutes to the meeting of the Elliott County Fiscal Court which seem to suggest that Mr. Darren Fannin was both reappointed and not reappointed in two separate motions.

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