

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF A POSSIBLE)	
VACANCY ON THE BOARD OF)	CASE NO.
COMMISSIONERS OF WESTERN PULASKI)	2019-00250
COUNTY WATER DISTRICT)	

ORDER

On October 1, 2019, the Commission established this case to determine whether a vacancy exists on Western Pulaski County Water District’s (Western Pulaski District) Board of Commissioners (Board) as a result of the expiration of the term of Don Calder and Randal Wilson, and if so, to identify a qualified candidate to fill the vacancy. On October 18, 2019, Western Pulaski District responded to requests for information from the Commission with information and documents regarding the appointment to the Board. On May 11, 2021, the Pulaski County Clerk similarly provided records regarding the appointment of commissioners to the Board of Western Pulaski District. Having reviewed the record and being otherwise sufficiently advised, the Commission finds that Mr. Wilson was last appointed to Board for a term ending October 4, 2017, and that Mr. Calder was last appointed to the Board for term ending July 11, 2018, and, therefore, that vacancies exist on the Board that need to be filed.¹

¹ The Commission understands that Mr. Wilson and Mr. Calder continued acting in their capacity as water district commissioners despite not being reappointed. As the Commission has previously noted, a water district commissioner whose term expires does have the authority to continue to serve until a successor is appointed. See Case No. 2019-00132, *An Investigation of a Possible Vacancy on the Board of Commissioners of Knott County Water and Sewer District* (Ky. PSC June 7, 2019), Order.

Waters districts formed pursuant to KRS Chapter 74, like Western Pulaski District, “shall be administered by a board of commissioners which shall control and manage the affairs of the district.”² The term of each water district commissioner shall be four years, “except as provided in this section.”³ Pursuant to KRS 74.020(1)(a), “[i]nitial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the [appropriate fiscal] court.”⁴ Further, KRS 74.020(4) states that vacancies “resulting from cause other than expiration of the term [of the water commissioner] shall be filled for the unexpired term only.”⁵

Generally, the county judge/executive has authority to appoint the members of the board of commissioners of a water district subject to the approval of the fiscal court.⁶ However, if the county judge executive with approval of the fiscal court fails to fill “a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent . . . within ninety (90) days following the vacancy,” then the vacancy “shall be filled by the Public Service Commission.”⁷

Here, Western Pulaski District’s 2011 Annual Report filed with the Commission indicates that its Board consisted of the following members with the following terms:

² KRS 74.020(1).

³ *Id.*

⁴ KRS 74.020(1)(a).

⁵ KRS 74.020(4).

⁶ See KRS 74.020(1)(a) (“Members of the board . . . shall be appointed by the county judge/executive with the approval of the fiscal court.”); see *also* KRS 74.020(4) (“Vacancies [on a board of commissioners] shall be filled by the same appointing authority [the county judge executive/fiscal court in appropriate county] which is empowered to make the original appointment.”).

⁷ KRS 74.020(4).

<u>Name</u>	<u>Reported Term Expiration</u>
Don Calder	07/11/2014
Teddy Roberts	07/11/2014
Jimmy Dalton	05/22/2015
Joel Wilson	10/04/2014
Randall Wilson	10/04/2013 ⁸

Records from previous commission cases indicate that Mr. Wilson was reappointed by the Commission for a term expiring on October 4, 2017,⁹ and that Mr. Calder was reappointed by the Commission for a term expiring July 22, 2018.¹⁰ Records produced by Western Pulaski District and the Pulaski County Court Clerk indicate that the Pulaski County Judge/Executive, with the approval of the fiscal court, appointed Steve Davis on August 7, 2018, for a term ending July 11, 2022; reappointed Joel Wilson on November 2018, for a term ending on October 4, 2022; and appointed Amy Polston on July 1, 2019, for a term expiring on June 30, 2023.¹¹

Based on the dates in the 2011 Annual Report, the appointment of Mr. Davis was within the 90-day period in which the appropriate county judge/executive and fiscal court could fill Mr. Robert's Board position, the November 2018 appointment of Mr. Wilson was within the 90-day period in which they could fill his position, and the appointment of Ms. Polston was within the 90-day period in which they could fill the position of Jimmy Dalton.

⁸ *Annual Report of Western Pulaski Water District to the Public Service Commission for the Year Ending December 31, 2011* at 14.

⁹ Case No. 2014-00040, *Request to Fill Vacancies on Western Pulaski County Water District Board of Commissioners* (Ky. PSC Apr. 1, 2014), Order (finding that Mr. Wilson's term expired on October 4, 2013, and reappointing him for term ending on October 4, 2017).

¹⁰ Case No. 2014-00406, *Request to Fill Vacancies on Western Pulaski County Water District Board of Commissioners* (Ky. PSC Mar. 19, 2015), Order (finding that Mr. Calder's term expired on July 11, 2014, and reappointing him for term ending on July 11, 2014).

¹¹ See Western Pulaski District's Response to Commission's October 1, 2019 Order (filed Oct. 18, 2019).

However, the records produced by the Western Pulaski District and the Pulaski County Court Clerk do not show that either Mr. Wilson or Mr. Calder was reappointed following the expiration of their terms on October 4, 2017, and July 11, 2018, respectively.

With respect to Mr. Calder's position, the Commission finds that a vacancy has existed for more than 90 days and that the Commission has authority to fill that position with a term that will end on July 11, 2022, at which point the appropriate county judge/executive and fiscal court will have the authority to fill that position pursuant to KRS 74.020 for a term ending July 11, 2026. With respect to Mr. Wilson's position, the Commission finds that his position was not filled at the expiration of his term on October 4, 2017, and that the Commission could have filled that position with a term ending October 4, 2021. However, the Commission finds that the county judge/executive with the approval of the fiscal court currently has the authority for 90 days from October 4, 2021, to fill that position for a new term ending October 4, 2025.

To ensure that a wide range of candidates are considered, the Commission will require Western Pulaski District to publish the notice of vacancy attached as an Appendix to this Order in a newspaper of general circulation in Pulaski County. The Commission will consider any applications submitted within 20 days after the publication of notice, and each such application should be made in writing and should include the applicant's name, address, telephone number, and qualifications and shall reference this case number. The Commission will also consider recommendations and letters from references submitted in writing and received within a reasonable time, though such letters should reference this case number to ensure they are placed in the proper file. After receiving the applications, the Commission will determine whether each candidate 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 Western Pulaski District's Board.

IT IS THEREFORE ORDERED that:

1. Within 20 days of the date of entry of this Order, Western Pulaski District shall publish, in a newspaper of general circulation in Pulaski County, the notice of the vacancy on Western Pulaski District's Board attached as Appendix hereto.

2. Within five days of the publication, Western Pulaski District shall supply proof of publication to the Commission.

3. Within 20 days of the date of publication, any person who wishes to apply as a candidate to fill the vacancies on Western Pulaski District's Board of Commissioners shall submit to the Commission, in writing, their name, address, telephone number, qualifications, and shall reference Case No. 2019-00250.

4. The term of the commissioner appointed shall be four years from July 11, 2018, pursuant to KRS 74.020.

5. The Executive Director shall serve a copy of this Order upon the Pulaski County Judge/Executive; the members of the Pulaski County Fiscal Court; and the Western Pulaski District's Board.

By the Commission



ATTEST:


Executive Director

APPENDIX

AN APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2019-00250 DATED DEC 27 2021

Let it be known to the residents served by Western Pulaski County Water District that there is a vacancy on the Western Pulaski County Water District Board of Commissioners. The requirements to serve as a commissioner can be found at KRS 74.020. Any person interested in applying for the position shall submit notification, in writing, referencing Case No. 2019-00250 with contact information and any qualifications to the Public Service Commission located at 211 Sower Boulevard, Frankfort, Kentucky 40601, within 20 days of the date of this publication.

*Western Pulaski County Water District
2128 West Highway 80
Somerset, KY 42503

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