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November 18, 1998

Alisa B. Gatten  
Nebo Water District  
P.O. Box 147  
Nebo, KY 42441-0147

RE: Nebo Water District

*Notice: This letter is written in response to a request for information. It is not a formal legal Opinion of the Office of the Attorney General pursuant to KRS 15.025. As such, it is limited to the applicable law based upon the facts presented.*

Dear Ms. Gatten:

I am in receipt of materials sent to our office regarding the Nebo Water District. You present a question concerning a vacancy on the District's Board of Commissioners.

The expiration of a term results in the creation of a vacancy for the position. Your letter indicates August 26, 1996, as the date of the expiration of Jimmie Arnold's term as a Commissioner. Therefore, on this date, this position on the Nebo Water District's Board of Commissioners became vacant.

KRS 65.008 provides that a member of a board may continue to serve after the expiration of his term until the appointment and qualification of a successor. Thus, although the position is vacant, Mr. Arnold may continue to serve as a Commissioner until the appointment and qualification of his successor.

The county judge/executive has the responsibility for appointing water district commissioners. The appointment, however, is subject to the approval of the fiscal court. KRS 74.020. Per the facts you provide, the county judge/executive made an appointment to fill the vacancy resulting from the expiration of Mr. Arnold's term. Further, the appointment was made within 60 days of the expiration of the term. The fiscal court did not grant its approval for this appointment. Therefore, the position remains vacant.

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KRS 74.020(4) vests the Public Service Commission (PSC) with authority to fill a vacancy on a water district board when the county judge/executive, acting with the fiscal court, is unable to appoint and qualify a successor within 90 days following the expiration of a term. Consequently, under the facts you present, the PSC has the power to issue an order filling this vacancy upon request by a local official, the district, or any customer of the district.

While KRS 74.020(4) implicitly divests local officials of any authority to act more than 91 days following the expiration of a term, we believe that such an interpretation is inconsistent with the purpose of the statute. KRS 74.020(4) enables PSC action when the local officials do not produce a successor. The purpose of the legislation is to ensure that action is taken to fill the vacancy. Divesting local officials of power eliminates a method for achieving the result sought by the legislature.

Therefore, the PSC has authority to fill the vacancy after 90 days. Nevertheless, until the PSC takes action, the county judge/executive with the approval of the fiscal court may name a successor after the 90 day period. Upon the naming of a successor after the 90 day period, local authorities should forward notice of the action to the PSC. At that stage, the PSC may adopt or otherwise affirm the act; however, the act is not binding on the PSC. KRS 74.020(4) vests the PSC with the right to fill the position after the passage of 90 days, and the Commission is free to fill the vacancy with a different person at any time. This interpretation is wholly consistent with the statute's purpose of ensuring the filling of board positions in a timely fashion.

I hope that you find this information of assistance. If you have any questions, you may contact me.

Sincerely,

*David Edward Spenard*

David Edward Spenard  
Assistant Attorney General  
502.696.5457

cc: Gerald Wuetcher ✓

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