

Ky. OAG 78-161, 1978 WL 26584 (Ky.A.G.)

*1 Office of the Attorney General

Commonwealth of Kentucky

OAG

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March 15, 1978

Mr. R. H. Chandler
Chairman
Johnson County Housing Authority
P. O. Box 1102
Paintsville, Kentucky 41240

Dear Mr. Chandler:

This is in response to your letter of recent date in which you as Chairman of the Johnson County Housing Authority, created by the fiscal court in 1976 pursuant to [KRS 80.310](#) to [KRS 80.610](#), request an opinion concerning the following:

“Recently a new Fiscal Court and County Judge Executive took office and the Judge sent letters to three of the five members of the Housing Authority requesting their resignation and enclosed a letter of resignation for signature. One member misunderstood the letter thinking the Judge had the power to remove her unless she signed the enclosed letter. She serves in an executive capacity with a local bank. Three (3) days after she returned this letter to the Judge she sent another letter to the Judge rescinding the first letter. The Judge has chosen to ignore the second letter and is now trying to appoint a new member to fill the unexpired term.

“In accordance with our by-laws which were adopted on May 24, 1976, we contend the Judge cannot appoint anyone to fill a vacancy

unless that member first submits a letter of resignation to the Housing Authority. We are then required to give the Judge written notice of the vacancy. In this case no letter of resignation was submitted to the Housing Authority nor a copy of the letter submitted to the Judge.”

Under the above stated facts it is your contention that no vacancy exists since the resignation was improperly drawn and never acted upon initially by the Housing Authority pursuant to its bylaws, particularly Article V, which reads as follows:

“Vacancies due to resignation, removal or termination of membership, shall be filled within sixty (60) days by the appropriate appointing authority. After such vacancy occurs, the authority chairman shall immediately give the appropriate appointing authority notice that the vacancy exists. Then such appointing authority shall have sixty (60) days to fill the vacancy. If the appointing authority fails to do so, the authority shall fill the vacancy, using the same procedure it uses to elect its officers as set out in Article IV. When a vacancy occurs other than through expiration of the term of membership, it shall be filled for the remainder of that term.”

Under the terms of the County Housing Authority Act, particularly [KRS 80.420](#), it is noted that when a housing authority is created by the county, the governing body of the county appoints members of the authority and at the same time fills all vacancies for the unexpired terms. The term “governing body” is defined under [KRS 80.320\(1\)\(e\)](#) to mean, in the case of the county, the fiscal court. Thus, by statute, the fiscal court not only appoints members of the authority by proper motion and the majority vote [[KRS 67.040](#)], but also fills all vacancies. This means, of course, that the county judge has no authority to fill vacancies on the housing authority.

*2 Aside from the above, all resignations are governed by [KRS 63.010](#), which provides as follows:

“All resignations of office shall be tendered in

writing to the court or officer required to fill the vacancy, and received and recorded by the court or officer in its or his records. Resignations to the governor shall be recorded in the executive journal.”

END OF DOCUMENT

This statute simply means that anyone who wishes to resign from the housing authority must tender his or her resignation in writing directly to the appointing authority, which in this case is the fiscal court. The courts have held that a resignation tendered to the wrong person or body is a nullity. [Shacklett v. Island, 146 Ky. 798, 143 S.W. 369 \(1912\)](#). Aside from this, all resignations not only must be tendered to the proper authority, but are not effective until accepted by such authority [in this case, the fiscal court], and recorded in its minutes. Also, anyone may withdraw his resignation if he does so to prior to acceptance. [Hancock v. Queenan, 294 S.W. 2d 91 \(1956\)](#).

The above law, in effect, nullifies not only the right of the county judge to accept and fill vacancies on the housing authority but also nullifies the housing authority's bylaws to the effect that no vacancy exists unless written notice is given to the appointing authority by the chairman of the housing authority.

In attempting to answer your specific question, we can only conclude that if the letter of resignation submitted by the individual in question was duly signed and directed to the fiscal court, and accepted by the fiscal court and duly recorded in the minutes of the court prior to her withdrawal request, it became effective as of that time and a vacancy now exists. On the other hand, if the above procedure was not followed, no vacancy exists and the individual in question retains her position on the housing authority.

Yours very truly,
Robert F. Stephens
Attorney General

By: Walter C. Herdman
Assistant Deputy Attorney General

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