

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST TO FILL AN EXISTING VACANCY ON	)	
THE BOARD OF COMMISSIONERS OF	)	CASE NO. 2005-00384
LEDBETTER WATER DISTRICT	)	
	)	

ORDER

Chris Lasher, County Judge/Executive of Livingston County, Kentucky, has applied to the Commission to appoint James Schade to fill a vacancy on the Board of Commissioners of Ledbetter Water District. Arnie Pucket, the current holder of that position, has also applied for reappointment to fill that vacancy. After careful consideration of this application, we deny the application and reappoint Commissioner Puckett to serve the unexpired portion of this term.

Ledbetter Water District is a water district created pursuant to KRS Chapter 74 on October 16, 1971.<sup>1</sup> It provides water service to approximately 1,187 customers in Livingston County, Kentucky,<sup>2</sup> has net utility plant of \$948,146,<sup>3</sup> and had annual revenues of \$401,300 for the year ending December 31, 2004.<sup>4</sup> A five-member board

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<sup>1</sup> Report of Ledbetter Water District to the Public Service Commission for the Year ended December 31, 2004 at 4.

<sup>2</sup> Id. at 27.

<sup>3</sup> Id. at 7.

<sup>4</sup> Id. at 11.

of commissioners governs Ledbetter Water District. Each member of the board receives an annual salary of \$600.<sup>5</sup>

On September 19, 2005, County Judge/Executive Lasher advised the Commission in writing that a vacancy existed on Ledbetter Water District's Board of Commissioners and that he and a majority of the members of Livingston County Fiscal Court could not agree on who should fill this vacancy. He requested that the Commission appoint James Schade to fill this vacancy. Mr. Puckett has since requested that the Commission reappoint him to fill this vacancy.

Generally, a county judge/executive appoints water district commissioners. The county fiscal court must approve these appointments. KRS 74.020(4), however, provides that the Commission shall fill a vacancy to the board of commissioners "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."

The present case concerns Mr. Puckett. His term expired on September 14, 2005. Mr. Puckett had served on Ledbetter Water District's Board of Commissioners since 1993. Judge Lasher chose to appoint Jim Schade to fill this vacancy.<sup>6</sup> On September 15, 2005, the Livingston County Fiscal Court refused to approve this

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<sup>5</sup> Id. at 6.

<sup>6</sup> Mr. Schade is a retired businessman who lives in Ledbetter Water District's territory. He holds a Bachelor of Science degree in chemical engineering from Drexler University. From 1964 to 1984, he was employed at Pennwalt, Inc. in Calvert City, Kentucky as a production manager over refrigerant production. From 1986 to 2000, he served as Vice President and General Manager of Rail Services, Inc. in Calvert City, Kentucky. According to his resume, Mr. Schade in this position dealt extensively with environmental issues.

appointment. On September 22, 2005, Judge Lasher applied to the Commission to appoint Mr. Schade to fill the vacant position.<sup>7</sup>

As Mr. Puckett's term expired on September 14, 2005 and his position has been vacant for more than 90 days,<sup>8</sup> the Commission must fill the vacant position.<sup>9</sup> It is important that the vacancy be promptly filled to ensure continuity and remove uncertainty which could disrupt future actions of the Board.

In making our selection, the Commission must consider the totality of the circumstances, including the education, business and management experience, and personal history of the proposed candidates, the existing financial and operating condition of the water district, and the confidence that existing commissioners have in the proposed candidates. We find nothing within KRS 74.020(4) that requires us to

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<sup>7</sup> When County Judge/Executive Lasher filed his application, the vacancy had not existed for 90 days and the application was not ripe for decision. Accordingly, the Commission deferred any action until December 14, 2005.

<sup>8</sup> Although the position is technically vacant, Mr. Puckett continues to serve as an officer de facto. See KRS 65.008 ("Unless otherwise provided by law, appointed members of district governing bodies shall serve until their successors are appointed and qualified.")

<sup>9</sup> KRS 74.020(4) is unique in the remedy it provides for failure of local authorities to agree on appointments: without reference to any reason for such failure, the statute simply provides that, after a certain period of time (90 days) has passed, the Public Service Commission "shall" make the appointments. Moreover, we are instructed to make those appointments "[n]otwithstanding the provisions of KRS 67.710," which prescribes generally the authority of a county judge/executive to make appointments with the approval of the fiscal court. Clearly, the General Assembly intended to cut short any period of uncertainty regarding water commissioner appointments.

defer to the preferences of the county judge/executive, the members of a county fiscal court, or the water district's board of commissioners. We further find no statutory preference for incumbent commissioners. In the final analysis, each case must be decided upon its own set of facts.

Having reviewed the evidence of record, we find that Mr. Puckett, by virtue of his professional background, community involvement, residence within Ledbetter Water District's territory, and his extensive service as a water district commissioner is qualified to serve as a commissioner. There is no allegation of which this Commission is aware that Mr. Puckett is less than competent to fulfill his role as commissioner. To the contrary, the record demonstrates that he has the full confidence of his colleagues on the Commission. In addition, he is familiar with the complex issues currently facing Ledbetter Water District.

We imply no dissatisfaction with Mr. Schade. We simply conclude that, under the circumstances present here, reappointment of an experienced, proven commissioner constitutes the most reasonable and expeditious resolution to the current impasse.

IT IS THEREFORE ORDERED that:

1. Arnie Puckett is appointed and approved to fill the existing vacancy on Ledbetter Water District's Board of Commissioners.
2. Mr. Puckett's term shall be for the remainder of the vacant term and shall expire on September 14, 2009.

Done at Frankfort, Kentucky, this 30<sup>th</sup> day of March, 2006.

By the Commission

ATTEST:

A handwritten signature in black ink, consisting of several overlapping loops and a long horizontal stroke at the end, positioned above a solid horizontal line.

Executive Director

Case No. 2005-00384