

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST TO FILL AN EXISTING VACANCY ON )  
THE BOARD OF COMMISSIONERS OF WESTERN ) CASE NO. 2005-00462  
FLEMING COUNTY WATER DISTRICT )

O R D E R

Fleming County Judge/Executive Larry H. Foxworthy has requested that the Commission appoint Larry T. Ingram to fill a vacancy on the Western Fleming County Water District's ("Western Fleming District") Board of Commissioners. After careful consideration, we grant the request.

Western Fleming District is a water district organized pursuant to KRS Chapter 74. Created on April 1, 1958,<sup>1</sup> it owns and operates facilities that provide retail water service to approximately 1,340 customers in Fleming, Mason, Nicholas and Robertson counties, Kentucky<sup>2</sup> and wholesale water service to Buffalo Trail Water Association, Southern Mason Water District, Fleming County Water Association, and Nicholas County Water Association.<sup>3</sup> As of December 31, 2004, Western Fleming

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<sup>1</sup> Annual Report of Western Fleming County Water District to the Public Service Commission of Kentucky for the Year Ended December 31, 2004 at 4.

<sup>2</sup> Id. at 5 and 27.

<sup>3</sup> Id. at 30.

District had total assets of \$4,986,649<sup>4</sup> and annual revenues of \$633,244.<sup>5</sup> A five-member board of commissioners controls and manages Western Fleming District's affairs.<sup>6</sup>

On November 7, 2005, County Judge/Executive Foxworthy advised the Commission in writing that a vacancy existed on Western Fleming District's Board of Commissioners for more than 90 days and that he and a majority of the members of Fleming County Fiscal Court could not agree on who should fill this vacancy. He requested that the Commission appoint Larry T. Ingram to fill this vacancy. Jerry Neal, currently Western Fleming District's chairman, 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."

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<sup>4</sup> Id. at 9.

<sup>5</sup> Id. at 11.

<sup>6</sup> Id. at 6. See also KRS 74.020(1).

The present case concerns Mr. Neal. His term expired on May 12, 2005.<sup>7</sup> On or about October 18, 2005, Judge/Executive Foxworthy appointed Larry T. Ingram to fill the vacancy. On November 1, 2005, Fleming County Fiscal Court refused to approve this appointment. The same day County Judge/Executive Foxworthy advised Mr. Neal that Fleming County Fiscal Court would not reappoint him as a commissioner.

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<sup>7</sup> The record reflects some confusion as to when Mr. Neal's term expired. Mr. Neal was appointed on January 20, 1992 to fill an unexpired term that was to expire on May 12, 1993. He was subsequently reappointed three times. The Fleming County Fiscal Court minutes in which these reappointments are noted, however, reflect differing term dates. Other contemporaneous documents also reflect differing dates.

KRS 74.020 provides that the term of a water district commissioner is four years. (An exception is the initial appointment of commissioners at the creation of a water district. The terms of these appointments are for two, three, and four years.) Water district commissioner terms run for four years irrespective of the date that a fiscal court approves an appointment or the Commission fills a vacancy. Upon the expiration of a term, the next term begins immediately and runs for four years. Vacancies resulting from other than expiration of term shall be filled for the unexpired term only. See KRS 74.020(4).

As Mr. Neal's term expired on March 12, 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 filled as promptly as possible to ensure continuity and remove uncertainty which could disrupt future actions of the Board.

In making our selection, the Commission considered the totality of the circumstances. We find nothing within KRS 74.020(4) that requires us to 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. Ingram is qualified to serve as a commissioner. We further find that his appointment should not disrupt or disturb Western Fleming District's operations or have a divisive effect on Western Fleming District's Board of Commissioners.

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<sup>8</sup> Although the position is technically vacant, Mr. Neal 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.

We imply no dissatisfaction with Mr. Neal. We simply conclude that, under the present circumstances, he has lost the confidence of a majority of the members of Western Fleming District's Board of Commissioners and the Fleming County/Judge Executive, and that his reappointment may have a divisive effect on the water district's management.<sup>10</sup> The most reasonable and expeditious resolution to this matter, therefore, is the appointment of a qualified person to succeed him.

IT IS THEREFORE ORDERED that:

1. Larry T. Ingram is appointed and approved to fill the existing vacancy on Western Fleming District's Board of Commissioners.
2. Mr. Ingram's term shall be for the remainder of the vacant term and shall expire on May 11, 2009.

Done at Frankfort, Kentucky, this 1<sup>st</sup> day of February, 2006.

By the Commission

ATTEST:



Executive Director

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<sup>10</sup> See letter from Vernon Barton, William Fred Rose, Jr., and Billy W. McIntyre, Commissioners, Western Fleming County Water District, to Beth O'Donnell, Executive Director, Public Service Commission (Dec. 8, 2005).