

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LEGAL QUALIFICATIONS OF REBEKAH)
JOHNSTON TO CONTINUE TO SERVE AS A) CASE NO. 2012-00449
MEMBER OF THE BOARD OF COMMISSIONERS)
OF SANDY HOOK WATER DISTRICT)

ORDER

This matter involves an investigation of allegations that Rebekah Johnston, a member of Sandy Hook Water District's ("Sandy Hook District") Board of Commissioners, failed to complete within one year of her appointment a program of instruction for newly appointed water district commissioners as KRS 74.020(8)(b) requires. Finding that Ms. Johnston failed to complete the required program of instruction and, therefore, has forfeited her office, we declare that a vacancy exists on Sandy Hook District's Board of Commissioners.

PROCEDURE

On September 24, 2012, the Commission received a letter from Elliott County Judge/Executive Carl Fannin in which he alleged that Rebekah Johnston had been appointed as a member of Sandy Hook District's Board of Commissioners on June 1, 2011 and that she had yet to complete the program of instruction for newly appointed commissioners that KRS 74.020(8)(b) requires a commissioner to complete within his or first year of office.¹ Judge/Executive Fannin requested the Commission determine

¹ Letter from Carl Fannin, Elliott County Judge/Executive, to Jeff Derouen, Executive Director, Public Service Commission (Sept. 21, 2012).

whether Ms. Johnston should be removed from her office pursuant to KRS 74.455² as a result of her failure to comply with KRS 74.020(8)(b).

On October 11, 2012, the Commission initiated this proceeding to determine whether Ms. Johnston had complied with KRS 74.020(8) and whether she is qualified to continue to serve as a member of Sandy Hook District's Board of Commissioners.³ Ms. Johnston submitted a written response to the Commission's Order on October 25, 2012. The Commission conducted an evidentiary hearing in this matter on November 13, 2012. Testifying at this hearing were: Ms. Johnston; Elliott County Deputy Judge/Executive Darren Fannin; Bernal Atkins, Chairman of Sandy Hook District's Board of Commissioners; and Sonya Harward, Commission Staff member. The record of this proceeding remained opened until February 15, 2013 for Sandy Hook District and Elliott County Fiscal Court to respond to requests for information.

DISCUSSION

Sandy Hook District, a water district organized in 1957 pursuant to KRS Chapter 74, owns and operates facilities that distribute water for compensation to

² KRS 74.455(1) provides:

From and after the creation and establishment of a water district and the appointment of water commissioners to manage the affairs of the district, and following the acquisition or construction by any duly created and established water district of a public water system, and the consequent establishment of regulatory jurisdiction over such water district by the Public Service Commission of Kentucky, the Public Service Commission may remove any water commissioner from his office for good cause, including, inter alia, incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office, including without limiting the generality of the foregoing, failure to comply with rules, regulations, and orders issued by the Public Service Commission.

³ Order of October 11, 2012 at 3.

approximately 1,223 customers in Elliott and Morgan Counties, Kentucky.⁴ As of December 31, 2011, Sandy Hook District had total assets of \$7,163,139.⁵ For the calendar year ending December 31, 2011, it had total operating revenues of \$482,599.⁶

A five-member board of commissioners administers Sandy Hook District and has the statutory responsibility to “control and manage” the water district’s affairs.⁷ The County Judge/Executive of Elliott County appoints Sandy Hook District’s commissioners with the approval of the Elliott County Fiscal Court.⁸

In April 2011, Elliott County Judge/Executive David Blair appointed Ms. Johnston to fill a pending vacancy on Sandy Hook District’s Board of Commissioners. Ms. Johnston was appointed to fill a vacancy that would result from the expiration of the term of Sandy Hook District Commissioner David Dennis. Mr. Dennis’s term expired on June 1, 2011. Her appointment apparently was effective on June 1, 2011.⁹

The record does not contain an exact date of Ms. Johnston’s appointment. Ms. Johnston testified that she was not present when Judge/Executive Blair made the appointment or Elliott County Fiscal Court approved the appointment.¹⁰ She further testified that she had never received a copy of the appointment order, but that she

⁴ *Annual Report of Sandy Hook Water District to the Public Service Commission for the Calendar Year Ended December 31, 2011* (“2011 Annual Report”) at 4-5, 27.

⁵ *Id.* at 8.

⁶ *Id.* at 10.

⁷ *Id.* at 6.

⁸ KRS 74.020(1).

⁹ V.R. 11/13/2012, 10:09:10-10:09:29.

¹⁰ V.R. 11/13/2012, 10:10:22-10:10:46.

believed the appointment became effective on or about June 1, 2011.¹¹ Neither Sandy Hook District nor Elliott County Fiscal Court has been able to produce a copy of the appointment order. Prior to the initiation of this proceeding, Sandy Hook District reported that Mr. Dennis's term expired on June 1, 2011¹² and that Ms. Johnston's term expired on June 1, 2015.¹³ Elliot County Fiscal Court records indicate that Elliott County Fiscal Court approved Ms. Johnston's appointment on April 14, 2011.¹⁴

KRS 74.020(8) provides:

(a) At least once annually, the Public Service Commission shall provide or cause to be conducted a program of instruction, consisting of at least twelve (12) hours of instruction, that is intended to train newly appointed commissioners in the laws governing the management and operation of water districts and other subjects that the Public Service Commission deems appropriate. The commission may charge a reasonable registration fee to recover the cost of the programs and may accredit programs of instruction that are conducted by other persons or entities and that the commission deems equivalent to its program of instruction.

(b) Within twelve (12) months of his or her initial appointment, each commissioner shall complete the program of instruction described in paragraph (a) of this subsection. Any commissioner who fails to complete the program within twelve (12) months of his or her initial appointment shall forfeit his or her office and all right to act in discharge of the duties of the office. A commissioner required to attend a program under this subsection shall be reimbursed for the cost of instruction by his or her water district.

¹¹ V.R. 11/13/2012, 10:08:50-10:09:11.

¹² *Annual Report of Sandy Hook Water District to the Public Service Commission for the Calendar Year Ended December 31, 2010* at 6.

¹³ *2011 Annual Report* at 6.

¹⁴ PSC Hearing Ex. 2.

Assuming that Ms. Johnston's appointment did not become effective until Mr. Dennis's term ended, KRS 74.020(8) required her to attend the program of instruction for newly appointed commissioners no later than May 31, 2012. She testified that she did not attend the program of instruction for newly appointed commissioners until October 10, 2012¹⁵ – almost 16 months after her appointment became effective. The record clearly shows that Ms. Johnston failed to comply with KRS 74.020(8).

Ms. Johnston offered several reasons for her failure to comply with KRS 74.020(8). She states that she was not informed of the requirement and was otherwise unaware of it until March 2012.¹⁶ When she became aware of the requirement, Ms. Johnston further testified, she was unable to attend the next two scheduled programs because registration had closed on the first available program and the second program conflicted with a medical appointment.¹⁷

Regardless of the reasons for Ms. Johnston's failure, her failure to attend the training within one year of her appointment and thus comply with KRS 74.020(8) results in the forfeiture of her office. KRS 74.020(8)(b) expressly states that "[a]ny commissioner who fails to complete the program within twelve (12) months of his or her initial appointment **shall forfeit his or her office and all right to act in discharge of**

¹⁵ V.R. 11/13/2012, 10:10:40-10:10:58

¹⁶ Lack of knowledge of a statute's requirements is not generally recognized as a defense to a person's failure to comply. See *Oppenheimer v. Com.*, 305 Ky. 147, 151, 202 S.W.2d 373, 375 (1947) ("Every person is conclusively presumed to know the law, although the ablest judges in the land often find great difficulty in determining what the law is in a particular case. There is no difficulty here in determining what the law is, but doubtless the appellant was unaware of its existence. Nevertheless, this is one of those risks that all of us take, and consequently suffer, now and then.").

¹⁷ The record shows that the Commission conducted three programs of instruction for newly appointed commissioners between June 1, 2011 and May 31, 2012. See PSC Hearing Ex. 1.

the duties of the office [emphasis added].” It makes no exceptions nor authorizes any official to excuse non-attendance or extend the time for attending the training.

In this regard, the case at bar is very similar to *Bowan v. Com. ex. rel Stidham*, 887 S.W.2d 350 (Ky. 1994), in which the Kentucky Supreme Court affirmed a lower court’s finding that a county clerk’s failure to post a bond prior to taking office resulted in the forfeiture of her office. Rejecting arguments that the county clerk had substantially complied with the law, the Court stated:

First, the directions of the Constitution and statutes are obvious. There is no equivocation or lack of clarity in the wording. The meaning is simply that a bond shall be posted before the officer assumes his duties. There is no room for interpretation here. Moreover, KRS 446.080(4) states that all words shall be construed “according to the common and approved usage of language.” “Shall” means shall. “[B]efore the officer assumes the duties of the office” means just that. We believe that KRS 446.080 further corroborates our interpretation of the Constitution and these statutes. See, for example, *Fayette County Education Association v. Hardy*, Ky.App., 626 S.W.2d 217 (1980). See also, *Bailey v. Reeves*, Ky., 662 S.W.2d 832 (1984).

“We have a duty to accord to words of a statute their literal meaning unless to do so would lead to an absurd or wholly unreasonable conclusion ... A legislature making no exceptions to the positive terms of a statute is presumed to have intended to make none.” *Id.* at p. 834.

Id. at 352.

We reach our decision in this matter reluctantly. The record shows that Ms. Johnston has performed the duties of her office in a diligent and faithful manner. Her colleagues describe her as a dedicated, honest, ethical, and professional public servant who is highly respected in her community. Ms. Johnston has given freely of her time and has received no compensation for her service as a water district

commissioner. Our decision should not be deemed in any manner as a reflection on Ms. Johnston's character or the quality of her service.

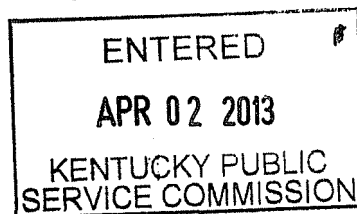
SUMMARY

Based upon the above, we find that, as a result of Ms. Johnston's failure to complete a Commission conducted or certified program of instruction for newly appointed water district commissioner by May 31, 2012, Ms. Johnston forfeited her office on June 1, 2012 and that the position she held has been vacant since June 1, 2012. As more than 90 days have passed since the vacancy occurred, the Commission has the exclusive authority to fill the position.¹⁸

IT IS THEREFORE ORDERED that:

1. Ms. Johnston forfeited her office as a member of Sandy Hook District's Board of Commissioners on June 1, 2012.
2. A separate docket shall be established to determine a suitable person to fill the vacancy on Sandy Hook District's Board of Commissioners that has existed since June 1, 2012.

By the Commission



ATTEST:

Executive Director

¹⁸ See, e.g., Case No. 2008-00395, *Request to Fill Existing Vacancies on the Board of Commissioners of Letcher County Water and Sewer Commission* (Ky. PSC Jan. 28, 2009) at 4.

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