

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF POSSIBLE)	
VACANCIES ON THE BOARD OF)	CASE NO.
COMMISSIONERS OF MARTIN COUNTY)	2019-00404
WATER DISTRICT)	

ORDER

On December 5, 2018, John Horn resigned as Chairman of the Board of Commissioners (Board) of the Martin County Water District (Martin District), and the Commission has received information in Case No. 2018-00017,¹ which is Martin District's request for a rate adjustment, that indicates that Mr. Horn's position was never filled. Martin District has also been unable to provide sufficient information regarding current board members to establish when their terms expire or expired pursuant to KRS 74.020. Thus, for the reasons discussed in more detail below, the Commission finds that this proceeding should be initiated to determine if vacancies have existed for more than 90 days on the Martin District Board of Commissioners and, if so, for the Commission to fill them pursuant to KRS 74.020(4).

Waters districts formed pursuant to KRS Chapter 74, like Martin District, "shall be administered by a board of commissioners which shall control and manage the affairs of the district."² If the water district is a single county district, "the board of commissioners

¹ *Electronic Application of Martin County Water District for an Alternative Rate Adjustment*, Case No. 2018-00017, Application (filed Jan. 16, 2018).

² KRS 74.020(1).

shall be composed of either three (3) or five (5) members.”³ “Members of the board shall be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established.”⁴

The term of each water district commissioner shall be four (4) years, “except as provided in this section.”⁵ Pursuant to KRS 74.020(1)(a), “[i]nitial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the [appropriate fiscal] court.”⁶ Further, KRS 74.020(4) states that vacancies “resulting from cause other than expiration of the term [of the water commissioner] shall be filled for the unexpired term only.”⁷

Generally, the county judge/executive has authority to appoint the members of the board of commissioners of a water district subject to the approval of the fiscal court.⁸ However, if the county judge executive with approval of the fiscal court fails to fill “a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent . . . within ninety (90) days following the vacancy,” then the vacancy “shall be filled by the Public Service Commission.”⁹

³ KRS 74.020(1)(a).

⁴ *Id.*

⁵ KRS 74.020(1).

⁶ KRS 74.020(1)(a).

⁷ KRS 74.020(4).

⁸ See KRS 74.020(1)(a) (“Members of the board . . . shall be appointed by the county judge/executive with the approval of the fiscal court.”); see also KRS 74.020(4) (“Vacancies [on a board of commissioners] shall be filled by the same appointing authority [the county judge executive/fiscal court in appropriate county] which is empowered to make the original appointment.”).

⁹ KRS 74.020(4).

Here, there is no question that Mr. Horn resigned from his position on December 5, 2018. During the course of Case No. 2018-00367, in which the Commission was investigating whether Mr. Horn completed the initial training required by KRS 74.020(8), Mr. Horn's counsel informed the Commission that he had resigned his position as Chairman of the Board of the Martin District on December 5, 2018.¹⁰ Further, evidence presented in Case No. 2018-00017 indicates that Mr. Horn's position was never filled. Thus, the Commission finds that a proceeding should be initiated to confirm that Mr. Horn's position on the Board has been vacant for more than 90 days and, if so, to fill the position.

There are also questions regarding when the terms of other members of the Board expire. Specifically, in its 2016 annual report, Martin District reported that the board members were John Horn, William Harvey, James Clark, Nita Collier, and John Haney and that their terms expired on February 1, 2020, February 1, 2020, February 1, 2020, February 1, 2018, and February 1, 2018, respectively.¹¹ On December 7, 2017, the Martin County Judge Executive, with approval from the Martin County Fiscal Court, appointed John Hensley, Rex Endicott, Jimmy Don Kerr, and Jarrod Crum to each fill one of the four positions not held by Mr. Horn, who continued to serve on the Board, but did not specify which position each person filled. Rather, the Judge Executive and the Fiscal Court attempted to reestablish and stagger the terms of the board members by approving a proposal that John Hensley and Rex Endicott serve a one year term, Jimmy Don Kerr

¹⁰ *Legal Qualifications of John Horn to Continue to Serve as a Member of the Board of Commissioners of Martin County Water District*, Case No. 2018-00367, Order (Ky. PSC Dec. 19, 2018).

¹¹ 2016 Annual Report at pg. 14.

and Jared Crum serve a two year term, and John Horn serve a three year term, all from December 7, 2017.¹²

However, KRS 74.020 would not permit the Judge Executive and Fiscal Court to change the terms of board members as they purported to do on December 7, 2017, because KRS 74.020(4) explicitly states that vacancies “resulting from cause other than expiration of the term shall be filled for the unexpired term only.” If the terms of the commissioners who were replaced did not expire until February 1, 2018 and February 1, 2020 as indicated in the 2016 Annual Report, then KRS 74.020(4) would apply such that the December 7, 2017 appointments would expire on February 1, 2018 and February 1, 2020, respectively. Further, assuming the dates provided in the 2016 Annual Report are accurate, if the Judge Executive, with the approval of the Fiscal Court, did not appoint persons to fill both the unexpired terms and the next terms that would begin on February 1, 2018 within 90 days of February 1, 2018, then the Judge Executive and Fiscal Court would lose the ability to do so pursuant to KRS 74.020(4).¹³ Thus, the Commission finds that this proceeding should also be initiated to investigate when the terms of other

¹² *Electronic Application of Martin County Water District for an Alternative Rate Adjustment*, Case No. 2018-00017, Exhibit 29 to October 22, 2019 Hearing (consisting of minutes to the a December 7, 2017 meeting of the Martin County Fiscal Court in which the commissioners discussed were appointed).

¹³ As noted above, KRS 74.020(1)(a) does permit “initial appointments” to be staggered, “as designated by the [fiscal] court,” at terms of 2 years, 3 years, and 4 years. However, the December 7, 2017 appointments appear to have been appointments to fill the unexpired terms of an existing members governed by KRS 74.020(4). Moreover, while the meaning of “initial appointments” is somewhat ambiguous, it appears to be referring to appointments at the time the district is formed, because the requirement that terms be 4 years in KRS 74.020(1) would be meaningless if terms could be changed to 2 years, 3 years, or 4 years every time a new term began. See *Lexington–Fayette Urban Cnty. Gov’t v. Johnson*, 280 S.W.3d 31, 34 (Ky. 2009) (“Under the rules of statutory construction, no part should be construed as ‘meaningless or ineffectual.’”); see also KRS 74.363(3) (this statute, which governs the composition of a board resulting from the merger of two water districts, uses language similar to KRS 74.020 to discuss term lengths but makes clear that the “initial” terms of the board as referred to therein as being staggered are the terms of the board immediately after the formation of the merged district and that the terms should be 4 years thereafter).

members of the Board expired or will expire and to fill any position that has remained vacant for more than 90 days pursuant to KRS 74.020.¹⁴

The Commission will make Martin District a party to this case and request that it provide certain information, which is set forth in a data request attached hereto as the Appendix . The Commission also will request, by separate letter, that the Martin County Clerk file copies of the meeting minutes of the Martin County Fiscal Court pertaining to the appointment of any commissioner to the Board during the relevant periods. If the Commission finds that a vacancy existed for more than 90 days, the Commission will then proceed to identify qualified candidates for appointment to those positions.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to determine whether vacancies have existed on Martin District's Board of Commissioners for more than 90 days and, if so, to fill the positions.
2. Martin District is made a party to this proceeding.
3. Any person seeking to intervene shall file a motion pursuant to 807 KAR 5:001, Section 4(11) within 20 days of entry of this Order. Any motion to intervene filed after that date shall show good cause for being untimely.
4. Any party filing documents with the Commission shall serve a copy of those documents upon all other parties.

¹⁴ While the Commission intends to investigate whether the terms of current members have expired, the Commission observes that it previously determined that members of a water district's board of commissioners who were properly appointed may continue to serve upon the expiration of their term until their successors are appointed and qualified. *See An Investigation of Possible Vacancy on the Board of Commissioners of Knott County Water and Sewer District*, Case No. 2019-00132, Order (Ky. PSC Aug. 19, 2019) (indicating that a board member whose term expired can continue to serve on the board until a replacement is properly appointed).

5. a. The information requested in the Appendix to this Order is due within 14 days of entry of this Order. Responses to requests for information shall be appropriately bound, tabbed, and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided, with copies to all parties of record, and the original and five copies to the Commission.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or the person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

c. A party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party refuses to furnish all or part of the requested information that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

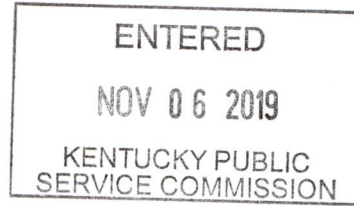
e. A party filing a document containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the document so that personal information cannot be read.

6. Service of all documents shall be made in accordance with 807 KAR 5:001, Section 4(8).

7. The Executive Director shall serve a copy of this Order upon the Martin District, Martin County Judge/Executive, the members of the Martin County Fiscal Court, and the members of Martin District's Board of Commissioners.

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By the Commission



ATTEST:


Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2019-00404 DATED **NOV 06 2019**

1. List the name of each current member of the Board of Commissioners of the Martin County Water District, the date he or she was appointed, and the date on which his or her term expires, and provide any documents referenced or relied upon to respond to this request.

2. Identify the predecessor on the Board of Commissioners of the Martin County Water District for each current member of the Board, and identify the date he or she was appointed, describe the circumstances under which he or she left the Board, e.g. his or her term expired, he or she resigned, etc., and state the date on which he or she left the Board, and provide any documents referenced or relied upon to respond to this request.

3. For each member of the Board listed on Martin County Water District's 2016 Annual Report, identify the date he or she was appointed, describe the circumstances under which he or she left the Board, e.g. his or her term expired, he or she resigned, etc., and state the date on which he or she left the Board, and provide any documents referenced or relied upon to respond to this request.

4. Identify the predecessor on the Board of Commissioners of the Martin County Water District for each member of the Board listed on the 2016 Annual Report, and identify the date he or she was appointed, describe the circumstances under which he or she left the Board, e.g. his or her term expired, he or she resigned, etc., and state the date on which he or she left the Board, and provide any documents referenced or relied upon to respond to this request.

5. Provide a map of Martin County Water District's territory.
6. Provide the ordinances and resolutions of Martin County Fiscal Court that establish Martin County Water District's territorial boundaries.
7. Provide all orders, minutes, ordinances, or resolutions of the Martin County Judge/Executive and/or the Martin County Fiscal Court that address the appointments of the Martin Water District's current Board of Commissioners.
8. With respect to the current members of the Board of Commissioners of the Martin County Water District, identify the commissioner who immediately preceded each current member and whose position on the Board of Commissioners they took, and provide any documents referenced or relied upon to respond to this request.
9. Provide all orders, minutes, ordinances, and resolutions of the Martin County Judge/Executive and/or the Martin County Fiscal Court that address the appointments to the Martin County Water District's Board of Commissioners since January 1, 2009.

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