

BEFORE THE PUBLIC SERVICE COMMISSION

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PUBLIC SERVICE COMMISSION

IN THE MATTER OF:

JOE CONLEY ) COMPLAINANT )

)

)

vs: )

)

)

)

MAGOFFIN COUNTY )

WATER DISTRICT ) DEFENDANT )

and )

RANDALL HARDIN ) DEFENDANT )

NO. 2007-00373

**MOTION TO DISMISS COMPLAINT**

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Comes now the Magoffin County Water District, by and through counsel, and for its Motion to Dismiss Complainant’s Complaint filed in this matter, and in support thereof, states as follows:

1) The Complainant, Joe Conley, has failed to meet his burden of proof of going forward to present any proof to support his claim that Water Board Commissioner, Randall Hardin, “lives outside the district he represents . . . in violation of the Bylaws of the Magoffin County Water Board”. The Complaint is also facially defective because it states a violation of Water Board Bylaws and fails to allege a violation of any controlling statute or regulation for which the Public Service Commission has jurisdiction to preside over in this case. If in fact there has been a violation of the Magoffin County Water District’s Bylaws as alleged by the Complainant, and Randall Hardin “lives” outside the Water Board’s district service area, the proper authority to first decide this alleged

violation of the Water Board's "Bylaws", would be the Magoffin County Water Board itself.

2) Complainant's Complaint is also clearly flawed in that it fails to properly state a violation of any statutory or regulatory requirement for being a Water Board Commissioner. KRS 74.020(1)(a), states that: "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... ." While residency is a requirement to be a qualified Board Member, living within the District is not a requirement. It is well settled that "residency" has a distinct meaning within the law and may be different from where a person actually lives. "Residence" means actual residence at a place coupled with the intent to remain at that place. OAG 85-41. Thus, while a person may live or stay at a certain location, that location is not considered his residence unless he also intends to make such place his residence. The Complainant has defectively framed his complaint and has clearly failed to state that Randall Hardin is not a resident of the Water Board's district. Alternatively, he has alleged that Commissioner Randall Hardin lives outside the district which is clearly not a requisite of KRS 74.020 to be a qualified Board Member.

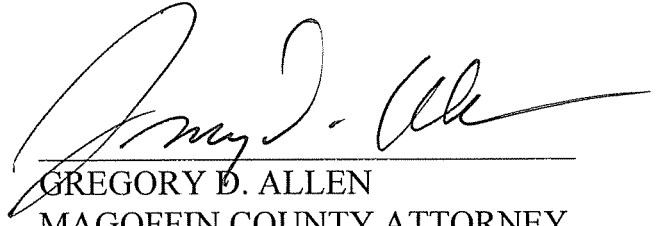
3) The Complainant has also failed to carry his burden of proof by presenting any evidence concerning the actual boundaries of the Magoffin County Water Board District as originally established in relation to Commissioner, Randall Hardin's residence. It is clear through documents supplied by the Magoffin County Water District in response

to the PSC Data Requests that the “area served by the Magoffin County Water District” was apparently last addressed on November 2, 1974, when the presiding County Judge, Hearl Borders, and the Magoffin Fiscal Court ordered an expansion of the Magoffin County Water District service area to entail “all that land in Magoffin County, Kentucky, lying outside the present City limits of the City of Salyersville, Kentucky.” Thereafter the City of Salyersville, has extended its City limits and boundaries on several occasions to include areas surrounding the city originally described in the Fiscal Court’s 1974 Order and the areas set forth as the territory of the Magoffin County Water District including the subject location where Randall Hardin’s dwelling is located. (i.e. The area where Commissioner Randall Hardin’s dwelling is located is the same area described in the 1974 Ordinance as territory of the Magoffin County Water District but was later included in the City’s expansion and extension of its City limits and boundary.) In summary, the area where Randall Hardin’s dwelling is located is within the “area served by the District in the County in which the District was originally established...” and was only included in the City limits when the City’s later expansion included same.

4) The movant further states that the issue before this Administrative Agency is now moot given the fact that the Magoffin Fiscal Court at its regular scheduled meeting on February 14, 2008 adopted an Ordinance pursuant to KRS Chapter 74 designating and clearly defining by survey description the service area and boundaries of the Magoffin County Water District as previously established by the 1974 Order of the Magoffin Fiscal Court. Based on same, Commissioner Randall Hardin’s dwelling and residence is clearly

within the Magoffin County Water District service area.

WHEREFORE, based on the foregoing, the movant, Magoffin County Water District, respectfully requests that the Complaint filed herein be dismissed with prejudice and that the Complainant take nothing thereby.



GREGORY D. ALLEN  
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(606) 349-7600

**CERTIFICATE**

This is to certify that a true and correct copy of the foregoing was this the 28<sup>th</sup>

day of February, 2008, mailed postage prepaid to the following:

Joe Conley  
231 Mine Fork Road  
Salyersville, Kentucky 41465

Randall Hardin  
Chairman, Magoffin County Water District  
749 Parkway Road  
P. O. Box 490  
Salyersville, Kentucky 41465

the original to:

Public Service Commission  
211 Sower Blvd.  
P. O. Box 615  
Frankfort, KY 40602-0615

  
GREGORY D. ALLEN