

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST TO FILL VACANCY ON THE ALLEN)
COUNTY WATER DISTRICT BOARD OF) CASE NO. 2011-00008
COMMISSIONERS)

ORDER

Allen County Judge/Executive Johnny Hobdy and the Board of Commissioners of Allen County Water District ("Allen District") have separately advised the Commission in writing of the existence of a vacancy on Allen District's Board of Commissioners that has remained unfilled for more than 90 days, have requested that the Commission fill the vacancy, and have proposed candidates for appointment. More specifically, Allen District requests that John H. Jones, the incumbent commissioner, be appointed to fill the unexpired term. Judge/Executive Hobdy proposes that Wayne Jackson be appointed. By this Order, we appoint Mr. Jackson to fill the vacancy.

Allen District, a water district organized pursuant to KRS Chapter 74 and created in 1974 as a result of the merger of North Allen Water District and South Allen Water District,¹ owns and operates facilities that distribute water for compensation to approximately 5,270 customers in Allen County, Kentucky.² As of December 31, 2010,

¹ Order of Allen County Court, Allen County Court Book 14, Page 582 (Sep. 30, 1974).

² *Annual Report of Allen County Water District to the Public Service Commission of Kentucky for the Year Ended December 31, 2010* ("Annual Report") at 5 and 21.

Allen District had total assets and other debits of \$17,580,049.³ For the calendar year ending December 31, 2010, it had total operating revenues of \$2,134,071.⁴

A five-member board of commissioners administers Allen District and has the statutory responsibility to “control and manage” the water district’s affairs.⁵ The County Judge/Executive of Allen County appoints the water district commissioners with the approval of the Allen County Fiscal Court.⁶ Pursuant to KRS 74.020(1), the terms of the members of a water district’s board of commissioners are staggered.⁷

The term of Allen District Commissioner John H. Jones expired on September 29, 2010. The Allen County Judge/Executive and Allen County Fiscal Court failed to act within 90 days to appoint a successor. On December 10, 2010, shortly before this 90-day period ended, Allen County Judge/Executive-Elect Johnny Hobdy advised the Commission in writing that the Allen County Fiscal Court was at an impasse and unable to fill the vacancy that the expiration of Mr. Jones’ term created.⁸ He recommended that the Commission appoint Wayne Jackson to the position. On December 29, 2010, Bobby Petty and Sue Carter, Allen District’s General Manager and Office Manager respectively, wrote to the Commission to request the reappointment of

³ *Annual Report* at 7.

⁴ *Id.* at 11.

⁵ KRS 74.020(1).

⁶ KRS 74.020(1)(b).

⁷ KRS 74.020(1)(a) (“Initial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the Court.”).

⁸ Letter from Johnny Hobdy, Allen County Judge/Executive-Elect, to Gerald Wuetcher, Executive Advisor, Public Service Commission (Dec. 10, 2010).

Mr. Jones to fill the vacancy.⁹ Shortly thereafter, the remaining four members of Allen District's Board of Commissioners also wrote to the Commission recommending the reappointment of Mr. Jones.¹⁰

On January 25, 2011, we initiated this proceeding to fill the existing vacancy. To ensure notice to all persons with a significant interest in this matter, the Commission ordered that Allen District, Allen County Judge/Executive Hobdy,¹¹ Allen County Fiscal Court, Mr. Jones, and Mr. Jackson be made parties to this proceeding. We further directed Mr. Jones and Mr. Jackson to provide information regarding their personal backgrounds and afforded all parties the opportunity to nominate additional persons to fill the existing vacancies. Mr. Jones and Mr. Jackson have responded to the Commission's directives to provide information.

On January 31, 2011, County Judge/Executive Hobdy informed the Commission that a majority of the members of Allen County Fiscal Court had approved a resolution that recommended the appointment of Mr. Jackson to serve as a member of Allen District's Board of Commissioners.¹²

Pursuant to KRS 74.020(1)(a), a county judge/executive appoints water district commissioners with the approval of the county's fiscal court. KRS 74.020(4), however, provides that the Commission shall fill a vacancy on the board of commissioners "if,

⁹ Letter from Bobby Petty and Sue Carter, Allen County Water District, to Gerald Wuetcher, Executive Advisor, Public Service Commission (Dec. 29, 2010).

¹⁰ Letter from Bobby G. Carter, Tracy Oliver, Joe Young, and Doug McClure, Commissioners, Allen County Water District, to Public Service Commission (Jan. 3, 2011).

¹¹ Mr. Hobdy assumed the office of Allen County Judge/Executive on January 1, 2011.

¹² Minutes of the January 25, 2011 Meeting of Allen County Fiscal Court at 7. The Commission has received statements in support of Mr. Jones' appointment from Roman Perry, Jr. and Carlos Miller. We have also received a petition from members of a local volunteer fire department in support of Mr. Jackson.

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 Commission finds that the term of Allen District Commissioner Jones expired on September 29, 2010 and that his position is currently vacant.¹³ We also find that this vacancy has existed for longer than 90 days. Based upon our review of the evidence of record, we find no information to suggest that either of the candidates is unqualified to serve in the designated position. We further find that each candidate resides within Allen District’s territory and possesses adequate education, business skills, and experience to perform the duties of water district commissioner.

The Commission takes note of the recent action of Allen County Fiscal Court to recommend the appointment of Mr. Jackson. While the law is clear that the Commission has the statutory duty and exclusive authority to fill the vacant positions when a county judge/executive and county fiscal court fail to act within 90 days of the vacancy’s creation,¹⁴ we have afforded significant weight to the positions of local elected officials. As we noted in Case No. 2007-00493, the Commission should defer

to the local elected officials in those instances where the local appointing and approval authorities have reached agreement on a candidate. Absent unusual circumstances that raise clear concerns about an agreed candidate’s qualifications, such deference is appropriate because local officials generally have a better understanding of the candidates’ qualifications and of the water district’s needs

¹³ While the office is considered vacant, Mr. Jones has continued to serve as a member of Allen District’s Board of Commissioners. Commissioners continue to serve until their successors are appointed and qualified. KRS 65.008. See also OAG 82-176 (“[A] member of the Water District Board can hold over after the expiration of his term only where there is no regularly elected and qualified successor. Where such officers hold over, their official acts are valid until their successors are appointed and qualified.”)

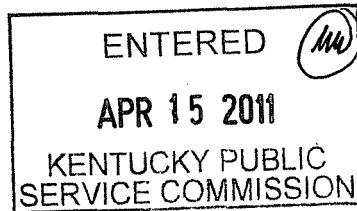
¹⁴ See Case No. 2007-00493, *Request for Assistance in the Appointment of Breathitt County Water District Commissioners* (Ky. PSC Mar. 20, 2008).

and because these officials are directly accountable to the water district's customers through the ballot box.¹⁵

As the local appointing and approving officials are in agreement and as the record contains no evidence to suggest that Mr. Jackson is unqualified to hold the position, we find that Mr. Jackson should be appointed to fill the existing vacancy on Allen District's Board of Commissioners.

IT IS THEREFORE ORDERED that Wayne Jackson of 1893 Browns Ford Road, Scottsville, Kentucky, is appointed to fill the existing vacancy on Allen District's Board of Commissioners. His term shall expire September 29, 2014.

By the Commission



ATTEST:



Executive Director

¹⁵ *Id.* at 4-5.

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