

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

APPOINTMENT OF COMMISSIONER TO FILL)	
AN UNEXPIRED TERM ON THE BOARD OF)	CASE NO. 2013-00149
COMMISSIONERS OF SANDY HOOK WATER)	
DISTRICT)	

ORDER

This proceeding was initiated pursuant to KRS 74.020(4) to fill a vacancy that exists on the Board of Commissioners of Sandy Hook Water District ("Sandy Hook District"). By this Order, the Commission appoints Gary Atkins, of Sandy Hook, Kentucky, to fill the vacancy.

Sandy Hook District, a water district organized in 1957 pursuant to KRS Chapter 74, owns and operates facilities that distribute water for compensation to approximately 1,223 customers in Elliott and Morgan counties, Kentucky.¹ As of December 31, 2011, Sandy Hook District had total assets of \$7,163,139.² For the calendar year ending December 31, 2011, it had total operating revenues of \$482,599.³

A five-member board of commissioners administers Sandy Hook District and has the statutory responsibility to "control and manage" the water district's affairs.⁴ The county judge/executive of Elliott County appoints Sandy Hook District's commissioners

¹ *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.

² *Id.* at 8.

³ *Id.* at 10.

⁴ KRS 74.020(6).

with the approval of the Elliott County Fiscal Court,⁵ except when a vacancy on the board of commissioners exists for more than 90 days.⁶

On April 2, 2013, after an investigation of more than five months in length and which included a hearing, the Commission found that Rebekah Johnston, a member of Sandy Hook District's Board of Commissioners, had failed to complete a Commission-conducted or certified program of instruction for newly appointed water district commissioner within one year of her appointment as KRS 74.020(8)(b)⁷ requires.⁸ We further found that as a result of this failure, Ms. Johnston had forfeited her office on June 1, 2012, and that her position on Sandy Hook District's Board of Commissioners was vacant.

Shortly after declaring Ms. Johnston's position vacant, the Commission initiated this proceeding to fill the vacancy. As the vacancy created by Ms. Johnston's failure to comply with KRS 74.020(8)(b) first existed on June 1, 2012 and had not been filled by August 29, 2012, the statutory duty and the exclusive authority to fill the vacancy shifted from the Elliott County Judge/Executive and Elliot County Fiscal Court to the

⁵ KRS 74.020(1).

⁶ KRS 74.020(4).

⁷ KRS 74.020(8)(b) states:

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.

⁸ Case No. 2012-00449, *Legal Qualifications of Rebekah Johnston to Continue to Serve as a Member of the Board of Commissioners of Sandy Hook Water District* (Ky. PSC Apr. 2, 2013).

Commission.⁹ KRS 74.020(4), which addresses the appointment of members to the boards of commissioners of water districts, states:

Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

The Commission notified Elliott County Judge/Executive, Elliot County Fiscal Court and Sandy Hook District's Board of Commissioners of the initiation of this proceeding and encouraged them to submit candidates. The Elliott County Judge/Executive and Fiscal Court have nominated Gary Atkins to fill the vacancy. Past and present members of Sandy Hook District's Board of Commissioners nominated Joe Montgomery for the vacant position. We further directed Mr. Atkins and Mr. Montgomery to provide information regarding their personal backgrounds. While the Commission was reviewing the candidates' records, Mr. Montgomery withdrew from consideration for the position.¹⁰

⁹ 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. But see Case No. 99-394, *Application of Hendron Water District for the Appointment of Water District Commissioner* (Ky. PSC Mar. 28, 2000); Case No. 2002-00408, *Mountain Water District's Petition for Appointment of Commissioners Pursuant to KRS 74.020(4)* (Ky. PSC Apr. 15, 2003); Case No. 2003-00085, *Gallatin County Water District's Request for Appointment of Commissioners Pursuant to KRS 74.020(4)* (Ky. PSC May 9, 2003).

¹⁰ When Commission Staff contacted Mr. Montgomery by telephone on August 27, 2013 to confirm certain information previously provided to the Commission, Mr. Montgomery advised that he no longer wished to be considered for the position. The Commission's Executive Director then notified Mr. Montgomery by mail that unless he notified the Commission in writing to the contrary by September 6, 2013, the Commission would assume that he had withdrawn his name from further consideration for the position. Letter from Jeff Derouen, Executive Director, Public Service Commission, to Joe Montgomery (Aug. 30, 2013). Commission records do not reflect any response from Mr. Montgomery.

In making our selection, the Commission must consider the totality of the circumstances, including the education, business and management experience, and personal history of the proposed candidates, and the existing financial and operating condition of the water district.¹¹ Based upon our review of the evidence of record, we find no information to suggest that Mr. Adkins is unqualified to serve in the designated position. We further find that he resides within Sandy Hook District's territory, is of legal age, possesses adequate education, business skills, and experience to perform the duties of water district commissioner, and does not have any legal disability that would disqualify him from serving in the position.¹²

The Commission takes note of the recent action of Elliott County Fiscal Court to recommend the appointment of Mr. Adkins. 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, we have given some deference, but not controlling weight, to the positions of local elected officials in prior cases.¹³ As the local appointing and approving officials are in this case in agreement and as the record contains no evidence to suggest that Mr. Adkins is legally unqualified to hold the position, we find that Mr. Adkins should be appointed to fill existing vacancy on Sandy Hook District's Board of Commissioners.

¹¹ See, e.g., Case No. 2012-00052, *Request to Fill Vacancies on Western Pulaski County Water District Board of Commissioners* (Ky.PSC Jan. 16, 2013).

¹² At the Commission's request, the Administrative Office of the Courts prepared and provided to the Commission a criminal record report on Mr. Adkins. It did not indicate any arrests or convictions for any misdemeanor or felony.

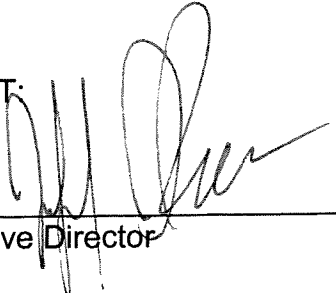
¹³ See, e.g., Case No. 2007-00493, *Request for Assistance in Appointment of Breathitt County Water District Commissioners* (Ky.PSC Mar. 20, 2008) at 4 – 5. This Commission has noted on several occasions that “nothing within. . . [KRS 74.020] requires us to defer to the preferences of county judge/executives, the members of fiscal court, or the water district's board of commissioners.” Case No. 2005-00462, *Request to Fill an Existing Vacancy on the Board of Commissioners of Western Fleming Water District* (Ky.PSC Feb. 1, 2006) at 4. Each case “must be decided on its own set of facts.” *Id.*

IT IS THEREFORE ORDERED that Gary Adkins, of Sandy Hook, Kentucky, is appointed to fill the existing vacancy on Sandy Hook District's Board of Commissioners. His term shall expire on May 31, 2015.

By the Commission

ENTERED
OCT 01 2013
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

Case No. 2013-00149

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