

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF A POSSIBLE	)	
VACANCY ON THE BOARD OF	)	CASE NO.
COMMISSIONERS OF SOUTH 641 WATER	)	2017-00426
DISTRICT	)	

ORDER

By letter dated September 28, 2017, Amy Fadden, administrator for South 641 Water District (South 641 District), advised the Commission that there were vacancies on South 641 District's Board of Commissioners that resulted from the expiration of two commissioners' terms, and that the vacancies were not filled within 90 days. According to the administrator, the commissioners' terms ended as follows: John Paschall's expiration of term was May 17, 2017; and Nancy Mieure's expiration of term was June 15, 2016.

The September 28, 2017 letter also stated that the minutes of the Calloway County Fiscal Court meeting on September 19, 2017, indicate that no appointments had been made; thus the vacancies remained unfilled for more than 90 days. By Order entered November 21, 2017, the Commission established this case to determine whether a vacancy or vacancies did exist for more than 90 days on the South 641 District's Board of Commissioners. The evidence of record shows that at least two vacancies exist and that the Calloway County Fiscal Court has been appointing commissioners to three-year terms, which should have been four-year terms, pursuant to KRS 74.020(1). The record is not sufficient to determine for how long South 641 District's commissioners have been

serving three-year terms in contravention of KRS 74.020(1). The Commission will accept the current dates as the expiration of terms; however, from this point forward South 641 District's commissioners must serve four-year terms, including those commissioners whose terms have not yet expired.

The Calloway County Fiscal Court minutes indicate that the vacancies created by the expiration of Mr. Paschall's and Ms. Mieure's terms were not filled within 90 days. Since these vacancies were not filled by September 19, 2017, the statutory duty and the exclusive authority to fill the vacancies shifted from the Calloway County Judge/Executive and Calloway County Fiscal Court to the Commission. KRS 74.020(4), which addresses the appointment of members to the board 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.

While a county judge/executive and a county fiscal court may reach agreement on a candidate for the vacant position, they lack the authority to fill the vacancy once it remained unfilled for more than 90 days; thus any agreement reached is only advisory to the Commission.<sup>1</sup>

---

<sup>1</sup> See Case No. 2008-00395, *Request to Fill Existing Vacancies on the Board of Commissioners of Letcher County Water and Sewer District* (Ky. PSC Jan. 28, 2009) at 4-5.

Accordingly, having declared two vacancies, the Commission finds that further proceedings are necessary to determine who should be appointed to fill the vacancies of the expired terms on the South 641 District's Board of Commissioners. To ensure that a wide range of candidates are considered, the Commission will permit all interested parties the opportunity to apply to the Public Service Commission for appointment to the positions. The Commission will then determine which candidates meet the constitutional and statutory requirements for the office of water district commissioner and, of those candidates who meet the requirements, which are best suited to sit on the Board of Commissioners. We will further direct that a copy of this Order be served upon the Calloway County Judge/Executive, the Calloway County Fiscal Court, the Calloway County Attorney, and the South 641 District's Board of Commissioners.

The Calloway County Judge/Executive, in an April 30, 2018 letter, requested the Commission "make inquiries" regarding whether Ms. Mieure acted without authority following the expiration of her term.

KRS 65.008 states that "Unless otherwise provided by law, appointed members of district governing bodies shall serve until their successors are appointed and qualified." Therefore, Ms. Mieure's authority to act as a commissioner did not lapse after the expiration of her term. Although the position is technically vacant, Ms. Mieure continues to serve as an officer de facto.

IT IS THEREFORE ORDERED that:

1. South 641 District must publish, in the newspaper with the largest circulation in the county, the notice of two vacancies on the South 641 District's Board of

Commissioners attached as Appendix hereto and supply proof of publication to the Commission within five days of publication.

2. Within 20 days of the date of publication, any person who wishes to apply as a candidate to fill the vacancies on South 641 Water District's Board of Commissioners shall submit to the Commission in writing the candidate's name, address, and telephone number.

3. The term of each commissioner appointed shall be four years pursuant to KRS 74.020, and the terms of current commissioners shall be extended to four years and staggered upon the filling of vacancies to be determined upon final order.

4. The Executive Director shall serve a copy of this Order upon the Calloway County Judge/Executive, the members of the Calloway County Fiscal Court, the Calloway County Attorney, and the South 641 District's Board of Commissioners.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

By the Commission

ENTERED  
AUG 31 2018  
KENTUCKY PUBLIC  
SERVICE COMMISSION

ATTEST:

  
Executive Director

Case No. 2017-00426

## APPENDIX

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2017-00426 DATED **AUG 31 2018**

#### Public Notice

Let it be known to the residents served by South 641 Water District that there are two (2) vacancies on the South 641 Water District Board of Commissioners. The requirements to serve as a commissioner can be found at KRS 74.020. Any resident of the district served by South 641 Water District interested in applying for the position shall send notification with contact information and any qualifications to the Public Service Commission located at 211 Sower Boulevard, Frankfort, Kentucky 40601, within 20 days of the date of this publication.

\*South 641 Water District  
South 641 Water District  
207 Main Street  
P. O. Box 126  
Hazel, KY 42047

\*South 641 Water District  
207 Main Street  
P. O. Box 126  
Hazel, KY 42047