

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF A POSSIBLE VACANCY)	CASE NO.
ON THE BOARD OF COMMISSIONERS OF)	2019-00132
KNOTT COUNTY WATER AND SEWER)	
DISTRICT)	

ORDER

By letter dated April 17, 2019, Calvin R. Tackett, counsel for the Knott County Water and Sewer District (Knott District), advised the Commission of a possible vacancy on the Board of Commissioners for the Knott County Water and Sewer District (Board).¹ According to Mr. Tackett, Dale Hamilton was appointed to a two-year term as water district commissioner beginning April 16, 2012, under KRS 74.020(1)(a). According to the terms of the appointment, Mr. Hamilton's term as water commissioner would have expired on April 16, 2014. However, Mr. Hamilton is claiming that under KRS 65.008(2), if no successor is appointed or nominated, this shall constitute a reappointment of the water district commissioner for another term of office. He claims each successive term would last four years under KRS 74.020(1). Thus, Mr. Hamilton is claiming he was automatically reappointed to a four-year term beginning April 16, 2014, and again on April 16, 2018, and that no vacancy will occur until April 16, 2020.

However, Mr. Hamilton is wrong in relying on KRS 65.008(2) to assert that failure to appoint a replacement at the expiration of his term would result in his automatic reappointment. KRS 65.008(2) deals with the expiration of the terms of appointed

¹ A copy of the letter is attached as Appendix A.

members of governing bodies and states, “[u]nless other provided by law [emphasis added], appointed members of district governing bodies shall serve until their successors are appointed and qualified. The failure of an appointing authority to appoint a successor . . . shall constitute the reappointment of that member for another term of office.”

Therefore, Mr. Hamilton was properly serving as a water district commissioner because no successor had been appointed. However, his term was not automatically extended. KRS 65.008(2) makes it clear that automatic reappointment to a term of office only occurs automatically under the statute if no other statute addresses the vacancy.

In the specific case of water district commissioners, KRS 74.020(4), directly 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 statute clearly and sets out two ways that a vacancy, “resulting from *the expiration of a term* [emphasis added] or the death, resignation, or removal of the incumbent . . .” can be filled first by the county judge/executive, with the approval of the fiscal court. If this has not been done within 90 days of the vacancy, the Public Service Commission is then empowered to fill the vacancy. There is no mention or implication that the water district commissioner’s term is automatically extended if the vacancy is not

filled. Such a contention goes against the clear wording of the statute. Therefore, KRS 74.020(4) would control in this situation.

The April 17, 2019 letter advised the Commission in writing that there was a possible vacancy pursuant to KRS 74.020(9)(a). The April 17, 2019 letter also stated that the Knott County Fiscal Court had neither appointed a new water district commissioner nor reappointed a current water district commissioners as of April 17, 2019. In the event of a vacancy in excess of 90 days, the Commission has the statutory duty and exclusive authority to fill the position. While a county judge/executive and a county fiscal court may reach agreement on a candidate for the vacant position, they lack authority to fill the vacancy once it has remained unfilled for more than 90 days. Any action on their part to appoint and approve a candidate after that time constitutes only a recommendation to the Commission.²

Accordingly, the Commission finds that a vacancy does exist for the position of water district commissioner on the Board and this proceeding should be initiated to determine whether such vacancy did exist for more than 90 days. The Commission will make Knott District a party to this case and requests that it provides certain information, which is set forth in a data request attached hereto as Appendix B. The Commission also will request, by separate letter, that the Knott County Clerk file copies of the meeting minutes of the Knott County Fiscal Court appointing Mr. Dale Hamilton, whose term reportedly began on April 16, 2012, and expired on April 16, 2014.

² 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.

If the Commission finds that a vacancy or vacancies did exist for more than 90 days, we will then proceed to identify qualified candidates for appointment to those positions. To ensure that a wide range of candidates are considered, the Commission will permit all interested persons the opportunity to nominate candidates for the position(s) and will then determine whether each of these candidates meets the constitutional and statutory requirements for the office of water district commissioner and, of those candidates who meet these requirements, who is best suited to sit on the Board. The Commission also will direct that a copy of this Order be served upon the Knott County Judge/Executive, the Knott County Fiscal Court, the Knott County Attorney, and the Board to notify them of this proceeding.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to determine whether a vacancy existed on the Knott District's Board for more than 90 days.
2. Knott District is made a party to this proceeding.
3. Any party filing documents with the Commission shall serve a copy of those documents upon all other parties.
4.
 - a. The information requested in Appendix B 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.

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

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

By the Commission

ENTERED
JUN 07 2019
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2019-00132

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2019-00132 DATED **JUN 07 2019**

TWO PAGES TO FOLLOW

RECEIVED

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APR 22 2019

PUBLIC SERVICE
COMMISSION
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(606) 633-0126
crtackett@birch.net

April 17, 2019

To: Gwen R. Pinson
Executive Director
Public Service Commission
211 Sower Blvd.
Frankfort, KY 40601

RE: Knott County Water & Sewer District

Dear Executive Director:

As counsel for the Knott County Water & Sewer District, I write to you to notify the P.S.C. of a possible vacancy on the Board of Commissioners.

I stress possible because there is some doubt as to the vacancy existence.

By way of background, this possible vacancy concerns Commissioner Dale Hamilton.

Mr. Hamilton is/was the longest serving member of Board.

His last term set by Fiscal Court began on April 16, 2012 and was for a two-year term. It would have terminated on April 16, 2014.

There are no further appointments by the Fiscal Court for this Commissioner. However, under KRS 74.020, his next term would have automatically went to four years. Presumably, the prior County Judge was operating under KRS 65.008 and allowed Mr. Hamilton to hold over on each anniversary. Chronologically, the current term would have started April 16, 2018. Thus, Mr. Hamilton asserts that there is no vacancy because the former County Judge allowed his appointment to hold over under KRS 65.008. Therefore, his term doesn't expire until April 16, 2020.

The current County Judge believes that there is a vacancy since end of last term, April 16, 2018, under KRS 74.020. The current County Judge acknowledges that Fiscal Court allowed the 90 days lapse and now recognizes that the P.S.C. has jurisdiction to declare and fill the vacancy.

The Knott County Water District Board feels that it is in the middle of these competing claims and desires only to have the correct statutory scheme applied.

Ms. Gwen R. Pinson
April 17, 2019
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Therefore, in order to reconcile the claims, the Board has chosen to bring this to the attention of the P.S.C. pursuant to KRS 74.020 so that inquiry and decision may be made.

Very truly yours,



Calvin R. Tackett

CRT/klk

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2019-00132 DATED **JUN 07 2019**

1. List the name of each current Knott District commissioner and the date on which their term expires.
2. Provide a map of Knott District's territory.
3. Provide the ordinances and resolutions of Knott County Fiscal Court that establish Knott County Water and Sewer District's territorial boundaries.
4. Provide all orders of the Knott County Judge/Executive that address the appointments to Knott District's current Board.
5. Provide all orders of the Knott County Judge/Executive that address appointments to the Knott District's Board to replace Mr. Dale Hamilton whose term allegedly began on April 16, 2012, and expired on April 16, 2014.
6. Provide all correspondence with the Knott County Judge/Executive regarding the expiration of the term of Mr. Dale Hamilton.

*Calvin R Tackett
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