

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST TO FILL AN EXISTING VACANCY )  
ON THE BOARD OF COMMISSIONERS OF ) CASE NO.  
LYON COUNTY WATER DISTRICT ) 2007-00036

O R D E R

On January 19, 2007, County Judge/Executive James C. Campbell advised the Commission in writing that a vacancy had existed on the Lyon County Water District Board of Commissioners ("LCWD Board") for more than 90 days and that he and a majority of the members of Lyon County Fiscal Court could not agree on who should fill this vacancy.<sup>1</sup>

LCWD is a water district organized pursuant to KRS Chapter 74. Created on October 31, 1978,<sup>2</sup> it owns and operates facilities that provide retail water service to approximately 2,128 customers in Lyon County, Kentucky.<sup>3</sup> For the calendar year

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<sup>1</sup> See Letter from James C. Campbell, Lyon County Judge/Executive, to Mark David Goss, Chairman, Kentucky Public Service Commission (January 19, 2007).

<sup>2</sup> Annual Report of Lyon County Water District to the Public Service Commission of Kentucky for the Year Ended December 31, 2005 ("Annual Report") at 4. See also Judge/Executive Campbell's Response to Order of March 1, 2007, Item 9 at 2 (showing the creation of the LCWD by the Lyon County Fiscal Court on June 25, 1963).

<sup>3</sup> See Annual Report at 27.

ending December 31, 2005, LCWD had total assets of \$4,961,622.00<sup>4</sup> and total water operating revenues of \$796,783.00.<sup>5</sup> A three-member board of commissioners controls and manages LCWD's affairs.<sup>6</sup>

The present case concerns Don Robertson. His term as a commissioner of the LCWD Board expired on October 1, 2006. He was nominated for reappointment by Judge/Executive Sara Boyd at the fiscal court meeting on December 13, 2006. The fiscal court refused to approve this appointment.<sup>7</sup>

As Mr. Robertson's term expired on October 1, 2006, and his position has been vacant for more than 90 days, the Commission must fill the vacant position.<sup>8</sup> It is important that the vacancy be filled as promptly as possible to ensure continuity and remove uncertainty which could disrupt future actions of the LCWD Board.

Generally, 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, 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."

In making our selection, the Commission must consider the totality of the circumstances, including the education, business and management experience, and

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<sup>4</sup> Id. at 7.

<sup>5</sup> Id. at 27.

<sup>6</sup> KRS 74.020(1)(a).

<sup>7</sup> Id.

<sup>8</sup> KRS 74.020(4).

personal history of the proposed candidates. We find nothing within KRS 74.020(4) that requires us to defer to the preferences of the county judge/executive, the members of the fiscal court, or the water district's board of commissioners. In the final analysis, each case must be decided upon its own set of facts.

In support of his recommendation of Don Robertson, Judge/Executive Campbell has pointed out that Mr. Robertson has served as a commissioner and chairman of the LCWD Board since 1979 and that his "experience and service. . .has led to. . .service to 100% of the residents in Lyon County." Judge/Executive Campbell also indicated that the water district had recently begun a program of providing wastewater service to the rural citizens of Lyon County and contended that "[n]ow is not the time to make a change."<sup>9</sup> Judge Campbell also noted that LCWD's other commissioners supported the reappointment of Mr. Robertson.<sup>10</sup>

The Commission was presented with an alternate nominee by two Lyon County Fiscal Court magistrates, Steve Cruce and Charles Ferguson. Through correspondence to the Commission, Mr. Cruce and Mr. Ferguson have recommended that the vacancy on the LCWD Board be filled by Tim Wiley.<sup>11</sup>

KRS 74.020(4) is unique in the remedy it provides for failure of local authorities to agree on appointments. Without reference to any reason for such failure, the statute simply provides that, after the passage of 90 days, the Commission "shall" make the

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<sup>9</sup> Campbell, supra note 1 at 1.

<sup>10</sup> See Lyon County Water District Resolution (Jan. 12, 2007).

<sup>11</sup> See Letter from Steve Cruce and Charles Ferguson, Lyon County magistrates, to Beth O'Donnell, Executive Director, Kentucky Public Service Commission (March 16, 2007).

appointments. Moreover, the Commission is instructed to make those appointments "notwithstanding the provisions of KRS 67.710," which prescribe generally the authority of a county judge/executive to make appointments with the approval of the fiscal court.

KRS 74.020(1) provides that, since LCWD lies wholly within Lyon County and operates as a single-county district, the board of commissioners shall be residents of the district. Both Mr. Robertson and Mr. Wiley are residents of LCWD.

Having reviewed the evidence of record, we find that Mr. Robertson, by virtue of his professional background, community involvement, residence within LCWD's territory, and his extensive service as a water district commissioner, is qualified to serve as a commissioner. No written allegation has been filed in the record of this case that Mr. Robertson lacks the ability, knowledge, or experience to competently fill the office of commissioner. He is familiar with the complex issues currently facing LCWD.

Our review of the record indicates that Mr. Robertson has not attended any ethics or management training for government/public officials since at least January 1, 2002. We therefore strongly recommend that Mr. Robertson attend one of the upcoming training sessions that the Commission offers.<sup>12</sup>

We imply no dissatisfaction with Mr. Wiley and wish to express our appreciation for his interest in LCWD and his willingness to serve as a commissioner. We simply conclude that, under the circumstances present here, reappointment of an experienced, proven commissioner constitutes the most reasonable and expeditious resolution to the current impasse.

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<sup>12</sup> The Commission offers such training on September 5 and 6, 2007 at Pine Mountain State Park; October 24 and 25, 2007 at Kenlake State Resort Park; and November 7 and 8, 2007 at Natural Bridge State Park.

IT IS THEREFORE ORDERED that:

1. Don Robertson is appointed and approved to fill the existing vacancy on the LCWD Board.
2. Mr. Robertson's term shall be for the remainder of the vacant term and shall expire on October 1, 2009.

Done at Frankfort, Kentucky, this 29th day of August, 2007.

By the Commission

ATTEST:  
  
Executive Director