

Carolyn C. Belcher
Bath County Judge Executive

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OCT 26 2009

PUBLIC SERVICE
COMMISSION

October 22, 2009

Mr. Jeff Derouen
Executive Director
Public Service Commission
Commonwealth of Kentucky
PO Box 615
Frankfort, Kentucky 40602

RE: Bath County Water District
Board Member Kelly Wilson
Qualifications to serve

Dear Mr. Derouen:

I am requesting the PSC to make a determination as to the qualifications of Water District Board member Kelly Wilson to serve per KRS 74.020(1)(a) particularly in light of House Bill 4 and PSC Case No. 2009-00209.

Board member Kelly Wilson has moved out of the Water District Service Area. I sent a letter dated September 24, 2009 to notify her that she was no longer qualified to serve on the board. I received a letter from the board attorney, Earl Rogers, III, dated October 12, 2009. He believes she is still qualified to serve based on the reasons outlined in his letter. I have enclosed a copy of my letter and his.

My concerns are as follows. Only after receiving notice of disqualification, did the board member add her name on the current bill mailing address. I do not believe this is her mailbox. She receives her mail at her home address. I do not believe the meter is in her name nor is she the customer who is responsible for bill payment. Further, I do not believe she pays the water bill with her own funds or on her behalf. These are the points that need clarification as to qualification to serve.

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An example – If I own land and rent it to an individual who puts in a mobile home and a water meter, the water meter is his. He may take it with him when he leaves. He is the customer not me. I am not a customer by virtue of owning land.

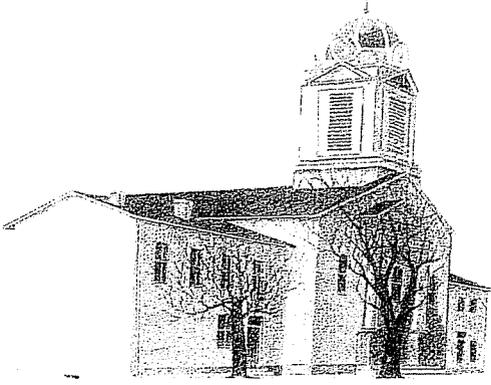
I believe this case needs further investigation by the PSC as to the qualification or disqualification of the board member and a determination by the PSC to see that the intent and letter of the law is followed. Case number 2009-00209 raises many questions for a fiscal court or board as to the specific determination of the definition of customer. While the board members in question in case number 2009-00209 were not found to be land owners and the board member in question here is a land owner, the question to be determined is whether she is in fact a customer of the water district. I believe there are additional details that need to be evaluated for consideration of a final determination.

I am asking the PSC to make a determination as to board member Kelly Wilson's qualifications to serve.

Sincerely,

A handwritten signature in cursive script that reads "Carolyn Belcher". The signature is written in black ink and is positioned above the printed name and title.

Carolyn Belcher
County Judge Executive



Carolyn C. Belcher
Bath County Judge Executive

September 24, 2009

Mrs. Kelly Wilson
127 John Stan Street
Owingsville, KY 40360

Dear Kelly:

I want to take this opportunity to thank you for your service on the Bath County Water District board. However, it has come to my attention that you have moved out of the water district boundaries and are no longer a customer of the Bath County Water District. I have enclosed a copy of KRS 74.020. The KRS defines a board member's qualifications. As you are no longer qualified to serve on the board, please submit your resignation to me and to the board of the water district board within 30 days.

Again, thank you for your service on the Water District Board.

Sincerely,

Carolyn Belcher
County Judge Executive

Cc: Earl Rogers, III

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EARL ROGERS III
MONICA HILL

(606) 783-1012
Fax (606) 784-8926

12 October 2009

Kelly Wilson, Chairman
Bath County Water District Board
P.O. Box 369
Salt Lick, Ky 40371

Re: District Board Membership

Dear Mrs. Wilson:

At your request I have researched the issue of your qualifications to serve on the Bath County Water District Commission in light of your recent move to within the corporate limits of the City of Owingsville. My initial reaction was the move did in fact disqualify you from serving on the Commission. The only question I had initially was whether or not the City of Owingsville was included as part of Bath County Water Districts area. I contacted the Public Service Commission to obtain information regarding the area of the Bath County Water District. I was provided that information and the geographic area of the Bath County Water District does not include the corporate limits of the City of Owingsville.

However, during the course of that investigation I also became aware of the decision of the Public Service Commission: In Re: The matter of legal qualifications of Toni Akers and Michael Litafik to continue to serve as commissioners of the Mountain Water District, case no. 2009-00209. This case was decided by the Public Service Commission on 20 August 2009. The facts of this case are nearly identical to your situation as they involve a water district commission member that moved from the water district area to the City of Pikeville which was not included in the water district area. The Public Service Commission found that each of the individuals were disqualified from serving on the water district commission. In the course of reading that opinion I found a reference to House Bill 4 of the 2009 General Assembly (extraordinary session). The interesting aspect of House Bill 4 is that it modifies KRS 74.020(1)(a). KRS 74.020(1)(a) provides that the commissioner's of a water district "shall be residents of the district", House Bill 4 states as follows: "water district board membership: notwithstanding KRS 74.020(1)(a), members of a water district's board of commissioners shall be residents *or customers* of the district." I have previously advised you that owning property in the district and/or being a customer of the district was irrelevant as the only requirement of KRS 74.020(1)(a) was residence. This House Bill modifies that requirement, at least for the time being.

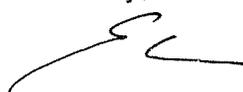
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Mrs. Kelly Wilson
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I have confirmed that you are in fact the joint title owner of a tract of real estate located in the Bath County Water District area, the location being where the Erma's Dairy Bar is located. Furthermore, I am informed that the water account for that property is in your individual name.

With regard to the above referenced PSC case, the commission members in that matter neither had a contract for water service with the district nor did they own the real estate that was served by the district. The closest either came was that one of the commission members was an officer in a corporation that owned real estate in the district and that was held to be insufficient. Since those are the two factors that the PSC looked at and you qualify under both of those factors, i.e. you are an owner of real estate in the district and the water account with the district is in your name, it is my opinion that you qualify as a customer as contemplated in House Bill 4.

Therefore, based upon the law as it exists now, it is my opinion that you are qualified to continue your service as a commissioner for the Bath County Water District. I will however state that in my opinion your qualifications are only for a limited time unless KRS 74.020 is amended or another state act contains identical language to House Bill 4. My belief that House Bill 4 relates to the state budget for the 2008-2010 fiscal years. Therefore it would appear that House Bill 4 will expire at the conclusion of those budget terms. If that is the case and KRS 74.020 has not been otherwise modified then the provision that permits you to remain as a commissioner as a customer will no longer exist and at that point you will be disqualified from serving as a commissioner for the Bath County Water District.

Sincerely,



Earl Rogers III
Attorney at Law

cdw
c: file
Carolyn Belcher

Lowell Jamison
Bath County Judge/ Executive
P.O. Box 39
Owingsville, Ky. 40360
Phone #(606-674-6346) Fax #(606-674-3087)

RE: Appointment to the Bath County Water District Board:

Whereas, there is now a vacancy in the office of Commissioner of the Bath County Water District Board, and it being incumbent upon the undersigned to fill said vacancy, it is hereby ordered and directed that Kelly Wilson be and she is, hereby reappointed as a Commissioner of said Bath County Water District Board for the term of four years. Beginning September 20, 2007 and term ending September 20, 2011.

This the 20 day of September, 2007



Lowell Jamison
Bath County Judge/Executive

Commissioners; Billy Martin

Jim Cline

Ray Toy