

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

LEGAL QUALIFICATIONS OF JOHN HORN)	
TO CONTINUE TO SERVE AS A MEMBER)	
OF THE BOARD OF COMMISSIONERS OF)	CASE NO.
MARTIN COUNTY WATER DISTRICT)	2018-00367

ORDER

Martin County Water District (Martin District), a water district organized pursuant to KRS Chapter 74, owns and operates facilities that treat and distribute water to approximately 3,243 customers in Martin County, Kentucky.¹ It is a utility subject to the Commission's jurisdiction under KRS 278.010(3)(d), KRS 278.015, and KRS 278.040. Martin District is administered by a five-member board that controls and manages the affairs of the district.

KRS 74.025(1) provides:

From and after the creation and establishment of a water district and the appointment of water commissioners to manage the affairs of the district, and following the acquisition or construction by any duly created and established water district of a public water system, and the consequent establishment of regulatory jurisdiction over such water district by the Public Service Commission of Kentucky, the Public Service Commission may remove any water commissioner from his office for good cause, including, inter alia, incompetency, neglect of duty, gross immorality, or nonfeasance, misfeasance, or malfeasance in office, including without limiting the generality of the foregoing,

¹ *Annual Report of Martin County Water District to the Kentucky Public Service Commission for Calendar Year Ended December 31, 2016* at 27.

failure to comply with rules, regulations, and orders issued by the Public Service Commission.²

KRS 74.020(8) provides:

(a) At least once annually, the Public Service Commission shall provide or cause to be conducted a program of instruction, consisting of at least twelve (12) hours of instruction, that is intended to train newly appointed commissioners in the laws governing the management and operation of water districts and other subjects that the Public Service Commission deems appropriate. The commission may charge a reasonable registration fee to recover the cost of the programs and may accredit programs of instruction that are conducted by other persons or entities and that the commission deems equivalent to its program of instruction.

(b) 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.

On April 11, 2016, the Commission initiated Case No. 2016-00142, an investigation into the operating capacity of Martin District.³ During the ongoing investigation, Martin District identified John Horn as a member of Martin District's Board of Commissioners.

² See also KRS 74.020(2) ("A commissioner may be removed from office as provided by KRS 65.007 or 74.025.").

³ Case No. 2016-00142, *Electronic Investigation of the Operating Capacity of Martin County Water District Pursuant to KRS 278.280*, Order (Ky. PSC Apr. 11, 2016).

On February 27, 2018, Martin District filed its Third Amended Witness & Exhibit List in Case No. 2016-00142.⁴ Within that filing, Martin District attached as an exhibit the minutes of Martin County Fiscal Court's July 28, 2016 meeting, attached hereto as Appendix A for reference. The minutes of that meeting read in pertinent part, "Magistrate Josh Muncy made motion to appoint John Horn to the Martin County Water Board. Seconded by Magistrate Victor Slone and was an unanimous vote."

Commission records do not reflect that Mr. Horn attended a program of instruction for newly appointed commissioners within the twelve months of his initial appointment. The Commission finds the absence of any record of Mr. Horn's completion of any of the instruction programs for newly appointed commissioners within one year of his appointment is *prima facie* evidence that Mr. Horn did not comply with KRS 74.020(8). It, therefore, appears that John Horn has forfeited his office and all right to act in discharge of the office. It further appears that John Horn is disqualified from continued service as a member of Martin District's Board of Commissioners and, because of this disqualification, good cause exists for his removal from that Board for neglect of duty.

IT IS THEREFORE ORDERED that:

1. Pursuant to KRS 74.025, this proceeding is initiated to determine whether John Horn has complied with KRS 74.020(8) and whether he is qualified to continue to serve as a member of Martin District's Board of Commissioners.
2. Within 10 days of service of this Order, Mr. Horn shall file with the Commission a written response to this Order and shall specifically admit or deny the allegation that he has not completed a program of instruction for newly appointed

⁴ Case No. 2016-00142, *Martin County Water District Third Amended Witness and Exhibit List* (filed Feb. 27, 2018).

commissioners within one year of the date of his initial appointment as a commissioner of Martin District.

3. Unless he waives his right to a public hearing in this matter, Mr. Horn shall appear at the Commission's offices at 211 Sower Boulevard on January 8, 2019, at 1:00 p.m. Eastern Standard Time for a public hearing on whether he has completed a Commission program of instruction for newly appointed commissioners within one year of the date of his initial appointment as a commissioner of Martin District and whether, if he has not completed the required training within the time period that KRS 74.020(8) specifies, he is disqualified from continued service as a member of Martin District's Board of Commissioners and must be removed from that Board.

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By the Commission

ENTERED
NOV 08 2018
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:


Executive Director

Case No. 2018-00367

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2018-00367 DATED

NOV 08 2018

TWO PAGES TO FOLLOW

Martin County Fiscal Court

July 28, 2016

CALLED TO ORDER

The meeting was called to order at 6:00 p.m. by Judge Executive, Kelly Callahan, Josh Muncy was present for District #1, Kenny McCoy Jr. for District #2, Darrell Mills for District #3, John Harmon for District #4 and Victor Slone for District #5. Assistant County Attorney Lynette Muncy led prayer.

ACCEPTING MINUTES OF LAST COURT MEETING

The minutes for June 23, 2016 were approved upon motion made by Magistrate John Harmon. The motion was seconded by Magistrate Victor Slone and was an unanimous vote.

SHERIFF'S QUARTERLY REPORT

Judge Executive, Kelly Callahan made motion that the sheriff's quarterly report was turned in a timely fashion. No motions were made.

WATER BOARD APPOINTMENT

Magistrate Josh Muncy made motion to appoint John Horn to the Martin County Water Board. Seconded by Magistrate Victor Slone and was an unanimous vote.

RESOLUTION - ARMY CORP (WATER & SEWER)

Discussion was made about Resolution Martin County Fiscal Court Hollybush Ky. 645 water and sewer extension project. Kelly Callahan read the resolution and explained to the court that the Martin County Board agreed to give the court the money to get project started. The court would pay the invoices and then send them into the state and they would reimburse the county within 30 days or would pay interest. Superintendent Larry James addressed the court and said the Martin County Board of Education would gladly do this to see the project move forward. Project should be in place by mid September 2016. Assistant County Attorney, Lynette Muncy informed the court this was pending an agreement being made between the court and Martin Co. Board of Education which should be ready by Tuesday August 02, 2016. Motion made by Magistrate Victor Slone and seconded by Magistrate John Harmon and was an unanimous vote. (Copy of resolution attached).

Court also agreed for Kelly Callahan Judge Executive to sign the agreement once prepared. Motion made by Magistrate John Harmon and seconded by Magistrate Darrell Mills and was an unanimous vote.

OPENING BID SURPLUS PROPERTY

Only one bid was presented to the court and was opened by Judge Executive, Kelly Callahan. Minimum bid for property was \$1,650.00 The bid was from Hyllis Moore for \$1,650.00 on tract #329 Lovely, Ky. Motion made by Magistrate John Harmon and seconded by Magistrate Victor Slone and was an unanimous vote. (Copy of bid attached).

FEE POOLING ORDINANCE

Judge Executive, Kelly Callaham read the first reading to repeal the Fee Pooling Ordinance. Motion made by Magistrate Josh Muncy and seconded by Magistrate Victor Stone and was an unanimous vote. Second reading of ordinance repeal was set for August 18, 2016. (Copy of Fee Pooling Ordinance repeal attached)

HIRING PART-TIME (PARKS)

Court agreed to hire Charles Green and Travis Johnson as part-time workers. Motion made by Magistrate John Harmon and seconded by Magistrate Darrell Mills and was an unanimous vote.

FINANCIALS

Approval of WVFD expense packet minus post office fee motion made by Magistrate John Harmon and seconded by Magistrate Victor Stone and was an unanimous vote.
Approval of Government Center Expense and Claims List motion made by Magistrate John Harmon seconded by Magistrate Victor Stone and was an unanimous vote.
Approval of Cash Transfer List and Appropriation Transfer List motion made by Magistrate Victor Stone and seconded by Magistrate Darrell Mills and was an unanimous vote.

Magistrate Darrell Mills addressed the court concerning the time frame to opt out on fire fees. He felt taxpayers did not have enough time to opt out of said fees and the deadline should be extended. Mike Crum addressed the court and stated that Bobby Hale, PVA was working on if you have vacant land it will automatically take off fees. Mike also stated they were trying to fix it where you would only have to opt out one time.

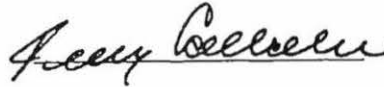
Regina Triplett addressed the court about Rand Paul and the possibility of having a town hall meeting in the future.

ADJOURN

The motion to adjourn was made by Magistrate Victor Stone and seconded by Magistrate John Harmon and was an unanimous vote.



Jeanetta Goble, Court Recorder



Kelly Callaham, Judge/Executive

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*John Horn
Chairman
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