



RECEIVED

JUL 29 2019

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
OFFICE OF THE BOYD COUNTY ATTORNEY

C. PHILLIP HEDRICK  
BOYD COUNTY ATTORNEY  
P.O. BOX 425  
CATLETTSBURG, KY 41129

July 25, 2019

PHONE: 606 739-4321  
606 739-4466  
FAX: 606 739-6620

Gwen R. Pinson, Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
2011 Sower Blvd.  
Frankfort, KY 40602-0615

RE: Big Sandy Water District  
Case No. 2019-00187

Dear Director Pinson,

Enclosed please find documents or records being produced by the Boyd County Clerk in response to your Order entered July 10, 2019. Because neither the Boyd County Clerk, Boyd County Fiscal Court and Boyd County Attorney are a party to this action, these documents are being provided via this cover letter rather than by way of pleading or formal Notice of Filing. I am however, providing a courtesy copy hereof the Big Sandy's Attorney, Hon. Gerald E. Wuetcher. I trust this is acceptable to you and the PSC.

In consideration of the foregoing please disregard my letter of July 12, 2019 requesting clarification of your Order.

Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "C. Hedrick".

C. Phillip Hedrick  
Boyd County Attorney

CH/bb

cc: Hon. Gerald E. Wuetcher  
Stol, Keenon, Ogden, PLLC  
300 West Vine Street  
Lexington, KY 40509-1801  
Email: gerald.wuetcher@skofirm.com

Hon. J.E. B. Pinney, General Counsel  
Kentucky Public Service Commission  
211 Sower Blvd  
Frankfort, KY 40602-0615  
Email: jeb.pinney@ky.gov

**DEBBIE JONES**

**CLERK OF BOYD COUNTY**  
P. O. Box 523  
CATLETTSBURG, KY 41129-0523



**Boyd County Courthouse**

2800 Louisa St.  
Catlettsburg, KY 41129  
Ph. 606-739-5116  
Fax: 606-739-0430

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PUBLIC SERVICE  
COMMISSION

July 24, 2019

**C. Phillip Hedrick**  
**Boyd County Attorney**

Phillip,

Per your request dated July 12, 2019, regarding records, appointments, Ordinances, etc. for Big Sandy Water District:

Records requested in my Possession, are:

- #1.... Copy of Fiscal Court Order Page 579, Book 37, motion to appoint James David Salisbury To Big Sandy Water District
- #2.... Resolution 2018-12, passed December 19, 2012
- #3.... Correspondence from PSC to Judge Tower, dated September 27, 2018
- #4.... Faxed copy from BSWD, noting the Current Boyd Appointments to Board(Requested)

Let me know should you need any additional information. Thanks

**Debbie Jones-Castle**  
**Boyd County Clerk**

**Ashland Branch**

335 16th St.  
Ashland, KY 41101  
Ph. 606-325-3547



**KYOVA Mall Branch**

US Rt. 60  
Ashland, KY 41102  
Ph. 606-929-9595

**ORDERS**

Boyd County Fiscal

COURT

September 1, 2015

Regular Meeting

Ron Cooper Co.

#1

**Discussion --**

1. Joe Burchett, County Jailer informed the Fiscal Court Members he would initiate the SAP (Substance Abuse Program) Program for inmates that would pay \$39.00 per day.
2. County Judge announced to Fiscal Court Members about Landfill Update in packet. Also about Permit Renewal.
3. EN Engineering-New Building top of England Hill and Lake Bonita Rd. will have ribbon cutting on Thursday September 17<sup>th</sup>, at 1:00 PM. Governor or possible Lieutenant Governor will be present.
4. Hearing on Solid Waste (Big Run Landfill) was in Frankfort on September 3<sup>rd</sup>. County Judge will testify before a Senate Hearing on out of state waste.

**APPOINTMENT .....**

Motion was made by Tom Jackson and seconded by Carl Tolliver to make the following Appointments to **Big Sandy Water District** and **England Hill Volunteer Fire Department** as follows:

Big Sandy Water District....James David Salisbury... to a four (4) year term ending September 2019..

DID NOT RECEIVE letter

#2

COMMONWEALTH OF KENTUCKY  
BOYD COUNTY FISCAL COURT  
RESOLUTION 2018- 12

**A RESOLUTION DECLARING AND GRANTING USE OF COUNTY EASEMENTS  
AND RIGHTS-OF-WAY BY THE BIG SANDY WATER DISTRICT FOR ALL LEGAL  
PURPOSES INVOLVING ITS MISSION AND SPECIFICALLY IN CONJUNCTION WITH  
THE BIG SANDY WATER DISTRICT WATERWORKS BONDS, SERIES 2019**

**WHEREAS**, Boyd County Fiscal Court now has certain easements and rights-of-way throughout Boyd County for its use in conjunction with the delivery of various services to its residents, and

**WHEREAS**, the Big Sandy Water District is a public agency created to provide water service to the residents of Boyd County within the geographical area served by said Big Sandy Water District, and said Big Sandy Water District has, or will, issue revenue bonds formally known as the Big Sandy Water District Water District Waterworks Revenue Bonds, Series 2019, in order to improve or expand its service to the citizens of Boyd County within its service district, and it will be necessary to utilize existing easements and rights-of-way now held in the name of Boyd County, Kentucky or the Boyd County Fiscal Court in order to expand or improve service to the the citizens of Boyd County within its service district, then

**NOW THEREFORE, BE IT RESOLVED BY THE BOYD COUNTY FISCAL COURT AS  
FOLLOWS:**

1. That the Big Sandy Water District shall be, and is hereby, granted the use of any and all existing county road easements and rights- of- way for all legal purposes involving the mission of the Big Sandy Water District including the scope of the project known as the Big Sandy Water District Waterworks Revenue Bonds, Series 2019.

2. Big Sandy Water District shall neither permit nor suffer any third party contractor hired by it from interfering with any existing user of any easement or right-of-way now held in the name of Boyd County, Kentucky or the Boyd County Fiscal Court, and any third party contractor making improvements at the request of Big Sandy Water District along any such easement or right-of-way shall return all roadways, shoulders and ditch lines to their condition just prior to commencement of construction of said improvements, all to the satisfaction and approval of the foreman of the Boyd County Road Department before any performance bond presented to Big Sandy Water District by any said thirty party contractor is released by Big Sandy Water District..

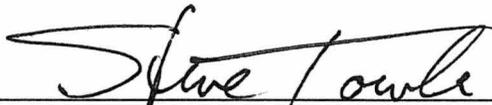
3. That this Resolution shall be effective immediately upon its passage and approval.

**SEE SIGNATURES ON NEXT PAGE**

COMMONWEALTH OF KENTUCKY  
BOYD COUNTY FISCAL COURT  
RESOLUTION 2018- 12

This the 19<sup>th</sup> day of December, 2018.

APPROVED FOR ENTRY:



Steve Towler, Boyd County Judge-Executive



John Greer, Commissioner

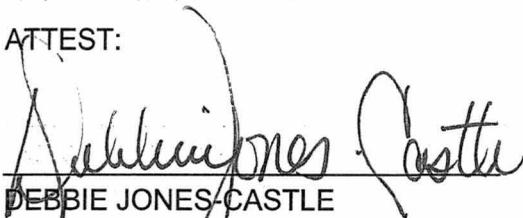


Tom Jackson, Commissioner



Carl Tolliver, Commissioner

ATTEST:



DEBBIE JONES-CASTLE  
BOYD COUNTY CLERK

#3

Matthew G. Bevin  
Governor

Charles G. Snavelly  
Secretary  
Energy and Environment Cabinet



Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

Michael J. Schmitt  
Chairman

Robert Cicero  
Vice Chairman

Talina R. Mathews  
Commissioner

September 27, 2018

Hon. Steve Towler  
Boyd County Judge Executive  
P.O. Box 423  
Catlettsburg, Kentucky 41229

Mr. Paul Thomas  
Chairman, Big Sandy Water District  
18200 State Route 3  
Catlettsburg, KY 41129

RE: Commissioner Vacancy on the Big Sandy Water District Board of Commissioners

Hon. Towler and Chairman Thomas:

I received letters from and between each of you regarding a vacancy on the Big Sandy Water District Board of Commissioners (the Board) resulting from the expiration of Mr. Larry Shockey's term as of September 9, 2018. These letters are attached for reference. As you know, the Commission takes seriously its statutory duties with respect to water commissioners, who are charged with the important task of managing the districts that supply water to our local communities. Your letters suggest questions regarding the law as to commissioner vacancies. Please know that this letter is an attempt to explain that law from the Commission's perspective, based on the facts presented in your letters. This letter is in no way binding on the Commission should the issue be formally presented to the Commission or additional facts become known.

Water district commissioners are normally appointed to four-year terms by the appropriate county judge/executive, with the approval of the fiscal court, pursuant to KRS 74.020(1) and (4). Should a commissioner's term expire, the district is required to notify the Commission of the vacancy. See KRS 74.020(9). A water district commissioner position is considered a "hold over" position, that is, the commissioner whose term has expired continues to serve, with certain exceptions, until a successor is appointed. See KRS 65.008(2); see also OAG 82-176 ("[A] member of the Water District Board can hold over after the expiration of his term only where there is no regularly elected and qualified successor. Where such officers hold over, their official acts are valid until their successors are appointed and qualified.") (citations omitted).

Your letters indicate confusion regarding the next stage in the process. The letters include a reference to KRS 65.008(2), which states in part:

The failure of an appointing authority . . . , if the appointing authority's appointment is subject to the approval of a legislative body, to *nominate a successor within sixty (60) days of the expiration of the term of office* of a member of a district governing body shall constitute the reappointment of that member for another term of office.

(Emphasis added). By its plain language, this portion of the statute applies only when the appointing authority, in this case the judge/executive, fails to *nominate* a successor, not to a situation where the successor has been nominated but not been appointed, i.e., approved by the fiscal court. I understand from Judge Towler's September 17, 2017 letter that he has made at least two nominations to fill the vacancy. Thus, assuming for the moment that this portion of KRS 65.008 applies to water districts, Judge Towler's nominations preclude finding of an automatic reappointment under this statute. Moreover, it has not been 60 days since the expiration of the term at issue. Thus, if Judge Towler had not previously nominated a successor he would still have time to do so under this statute before the automatic reappointment portion could apply.

More importantly, water districts are subject to the more specific statute at KRS 74.020(4), which provides, among other things, that the Commission has the authority to appoint a water district commissioner to a position vacant for more than 90 days:

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.

(Emphasis added). Under Kentucky law, this more specific statute controls over any contrary reading of KRS 65.008. *See, e.g., Light v. City of Louisville*, 248 S.W.3d 559, 563 (Ky. 2008). Under KRS 74.020(4), if a vacancy is not filled within 90 days of the creation of the vacancy "by the appropriate county judge/executive with approval of the fiscal court," the Commission "shall" make that appointment. Thus, there is no potential for automatic reappointment under KRS 65.008 for water district commissioners.

The Commission understands the term "shall" in KRS 74.020(4) as a direct command from the General Assembly that the Commission must make the appointment and that any contrary method of appointment would be contrary to Kentucky law. The Commission has on several occasions operated under this command and appointed water district

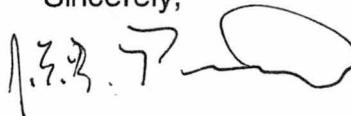
Hon. Steve Towler  
Mr. Paul Thomas  
September 27, 2018  
Page 3 of 3

commissioners where a vacancy had existed for 90 days. In these circumstances, the Commission has developed a practice of opening a formal proceeding, accepting nominations and applications for the position, conducting an investigation including interviewing applicants and nominees, and making a final decision regarding whom to appoint to the vacancy.

I hope this letter clarifies what would occur should the vacancy continue unfilled. Given that Mr. Shockey's term apparently expired as of September 9, 2018, we calculate the Commission's statutory obligation to appoint a commissioner arising on December 8, 2018, if the vacancy has not been filled by that date by the appropriate county judge/executive with approval of the fiscal court. In the meantime, Big Sandy Water District should inform the Commission if the vacancy is appropriately filled, as required by KRS 74.020(9)(b).

If you have any questions concerning this letter, please contact J.E.B. Pinney, Acting General Counsel, at (502) 782-2587 or at [jeb.pinney@ky.gov](mailto:jeb.pinney@ky.gov).

Sincerely,

  
Gwen R. Pinson  
Executive Director

Enclosures

RECEIVED

SEP 20 2018

PUBLIC SERVICE  
COMMISSION

Big Sandy Water District  
18200 State Route 3  
Catlettsburg, KY 41129  
(606) 928-2075 or (800) 354-2933  
[bdistrict@windstream.net](mailto:bdistrict@windstream.net)

September 18, 2018

Gwen R. Pinson, Executive Director  
Kentucky Public Service  
PO Box 615  
211 Sower Blvd.  
Frankfort, KY 40602-0615

Dear Ms. Pinson,

We are in receipt of a copy of a letter dated 9/12/18 from Judge Steve Towler to you concerning Big Sandy Water District. Please find enclosed a copy of District's letter to Judge Steve Towler dated 9/13/18.

It should be pointed out that Mr. Shockey was not terminated nor did he resign. His term as commissioner expired 9/9/18, and the District will consider him to be reappointed if the Boyd County Judge does not appoint somebody to fill this position within 60 days with the approval of the fiscal court.

If you have questions, please give us a call.

Yours truly,



Paul Thomas, Chairman  
BIG SANDY WATER DISTRICT



# BOYD COUNTY FISCAL COURT



STEVE W. TOWLER, Judge Executive

C. PHILLIP HEDRICK  
County Attorney

JOHN R. GREER  
County Commissioner  
District 1

TOM JACKSON  
County Commissioner  
District 2

CARL TOLLIVER  
County Commissioner  
District 3

ED RADJUNAS  
Deputy Judge Executive

VALERIE N. SMITH  
Economic Development

PATRICIA A. BALL  
County Treasurer

September 12, 2018

Gwen R. Pinson, Executive Director  
Kentucky Public Service Commission  
P.O. Box 615  
211 Sower Blvd.  
Frankfort, KY 40602-0615

RECEIVED

SEP 17 2018

PUBLIC SERVICE  
COMMISSION

RE: Big Sandy Water District  
Notice of Vacancy

Dear Ms. Pinson,

Notice is hereby given that as of September 9, 2018, there is a vacancy on the Big Sandy Water District Board of Commissioners as a result of the expiration of the term of Mr. Larry Shockey. I have made a recommendation to the Boyd Fiscal Court yesterday, September 11, as to an appointment to fill the aforesaid vacancy and the court failed to approve the recommendation. It is therefore anticipated the vacancy will not be filled within the ninety (90) days following the creation of the vacancy thus requiring action by the Public Service Commission to fill the vacancy per KRS 74.020 (4).

Big Sandy Water District is located at 18200 State Route 3, Catlettsburg, KY 41129. The District's phone number is (606) 928 2075.

Thank you.

Steve Towler  
Boyd County Judge Executive

Cc: Big Sandy Water District  
18200 State Route 3  
Catlettsburg, KY 41129



# BOYD COUNTY FISCAL COURT



STEVE W. TOWLER, Judge Executive

C. PHILLIP HEDRICK  
County Attorney

JOHN R. GREER  
County Commissioner  
District 1

TOM JACKSON  
County Commissioner  
District 2

CARL TOLLIVER  
County Commissioner  
District 3

ED RADJUNAS  
Deputy Judge Executive

PATRICIA A. BALL  
County Treasurer

VALERIE N. SMITH  
Economic Development

SEP 20 2018

Paul Thomas, Chairman  
Big Sandy Water District  
18200 State Route 3  
Catlettsburg, KY 41129

September 17, 2018

RE: Water District Commissioner Vacancy

Dear Mr. Thomas,

Thank you for your correspondence of September 13, 2018 concerning the vacancy created by the expiration of the term of Commissioner Larry Shockey.

Since receiving written notification from Big Sandy Water District that Commissioner Shockey's term expired September 9, 2018, I have nominated an appointee to fill the vacancy at both the August and September meetings of the fiscal court and the fiscal court has failed to approve the appointment.

I have reviewed both KRS 65.008(2) and 74.020(4) referred to in your correspondence.

In consideration of KRS 74.020, which is specific to water districts, I have made the Kentucky Public Service Commission aware of this situation should it require action on the PSC's part if the vacancy is not filled within the ninety (90) days anticipated by subsection (4). Otherwise I respectfully defer to the Kentucky Revised Statutes and applicable law as to your agency's day to day operations and filling the vacancy.

Thank you.

Steve Towler  
Boyd County Judge Executive

cc: Kentucky Public Service Commission

#4

**Big Sandy Water District**  
 18200 State Route 3  
 Catlettsburg KY 41129  
 (606) 928-2075 or (800) 354-2933  
 Fax (606) 928-8454  
[bdistrict@windstream.net](mailto:bdistrict@windstream.net)

Send to: Boyd County Clerk	From: Bobbi Burton
Attention: Tina	Date: 7/16/19
Office Location: Catlettsburg KY	Office Location: Catlettsburg KY
Fax Number: (606) 739-0430	Phone Number: (606) 928-2075

- Urgent
- Rely ASAP
- Please Comment
- Please Review
- For your Information

Total pages, including cover: 2 pages

Comments:  
 Boyd County Commissioners:  
 James Salisbury Sr. – commission expires 9/1/2019  
 Larry Shockey – commission expired 9/9/2018