

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

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| AN INVESTIGATION OF A POSSIBLE VACANCY |) | |
| ON THE BOARD OF COMMISSIONERS OF |) | CASE NO. |
| WESTERN PULASKI COUNTY WATER |) | 2019-00250 |
| DISTRICT |) | |

ORDER

The Commission established this case to determine whether a vacancy exists on Western Pulaski County Water District's (Western Pulaski District) Board of Commissioners (Board) as a result of the expiration of the term of Don Calder and Randal Wilson, and, if so, to identify a qualified candidate to fill the vacancy. On December 27, 2021, the Commission found that Mr. Wilson was last appointed to the Board for a term ending October 4, 2017, and that Mr. Calder was last appointed to the Board for a term ending July 11, 2018, and, therefore, that vacancies existed on the Board that need to be filled.¹ However, with respect to Mr. Wilson's position, the Commission found that the county judge executive with the approval of the fiscal court had the authority for 90 days from October 4, 2021, to fill that position for a new term ending October 4, 2025, and therefore, that the Commission did not currently have the authority to fill the position. Conversely, with respect to Mr. Calder's position, the Commission found that a vacancy

¹ The Commission understands that Mr. Wilson and Mr. Calder continued acting in their capacity as water district commissioners despite not being reappointed. As the Commission has previously noted, a water district commissioner whose term expires does have the authority to continue to serve until a successor is appointed. See Case No. 2019-00132, *An Investigation of a Possible Vacancy on the Board of Commissioners of Knott County Water and Sewer District* (Ky. PSC Jun. 7, 2019), Order.

existed for more than 90 days and that the Commission had authority to fill that position with a term ending on July 11, 2022, at which point the appropriate county judge executive and fiscal court would have the authority to fill that position pursuant to KRS 74.020 for a term ending July 11, 2026.

Water districts formed pursuant to KRS Chapter 74, like Western Pulaski District, “shall be administered by a board of commissioners which shall control and manage the affairs of the district.”² The term of each water district commissioner shall be four (4) years, “except as provided in this section.”³ Pursuant to KRS 74.020(1)(a), “[i]nitial appointments shall be for terms of two (2), three (3), and four (4) years, as designated by the [appropriate fiscal] court.”⁴ Further, KRS 74.020(4) states that vacancies “resulting from cause other than expiration of the term [of the water commissioner] shall be filled for the unexpired term only.”⁵

Generally, the county judge executive has authority to appoint the members of the board of commissioners of a water district subject to the approval of the fiscal court.⁶ However, if the county judge executive with approval of the fiscal court fails to fill “a vacancy resulting from the expiration of a term or the death, resignation, or removal of

² KRS 74.020(1).

³ KRS 74.020(1).

⁴ KRS 74.020(1)(a).

⁵ KRS 74.020(4).

⁶ See KRS 74.020(1)(a) (“Members of the board . . . shall be appointed by the county judge/executive with the approval of the fiscal court.”); *see also* KRS 74.020(4) (“Vacancies [on a board of commissioners] shall be filled by the same appointing authority [the county judge executive/fiscal court in appropriate county] which is empowered to make the original appointment.”).

the incumbent . . . within ninety (90) days following the vacancy,” then the vacancy “shall be filled by the Public Service Commission.”⁷

Since the December 27, 2021 Order in this matter, Mr. Wilson submitted minutes from the Pulaski County Fiscal Court meeting on October 27, 2021, indicating that he was appointed to his previous position on the board of the Western Pulaski County Water District for the 4-year term ending October 4, 2025. Based on that information, the Commission finds that Mr. Wilson’s position on the board is not currently vacant, and therefore, that no action is currently appropriate with respect to his position.

Pursuant to the December 27, 2021 Order, the Commission received applications to fill Mr. Calder’s board position and interviewed candidates. However, given the limited number of candidates that applied and the proximity to the end of the term that the Commission would fill, among other things, the Commission declined to fill the remainder of the term ending on July 11, 2022. Consistent with the December 27, 2021 Order, the county judge executive and fiscal court has the authority to fill that position for 90 days pursuant to KRS 74.020 for a term ending July 11, 2026.⁸

For the reasons discussed above and in the December 27, 2021 Order, the Commission finds that there is no vacancy which it currently has the authority to fill on the Board of the Western Pulaski District, and therefore, finds that this matter should be

⁷ KRS 74.020(4).

⁸ There are various statutes governing and identifying the appropriate county judge executive to fill vacancies in water district boards that serve more than one county. See, e.g., KRS 74.020(1)(b)-(c); KRS 74.361; KRS 74.363. The statutes establish rules that differ based on circumstances and have changed over the years such that their application could be affected by numerous facts going back to the founding, expansion, or merger of a district. Since the makeup of the Western Pulaski District’s Board has been previously reviewed by the Commission on several occasions, the Commission assumed that previous appointments were made by the appropriate county judge executive and looked only at whether action was taken to fill vacancies within 90 days of the vacancy.

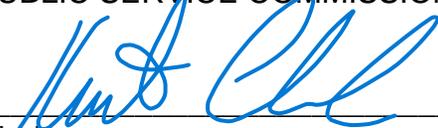
closed without further action. However, in the event the county judge executive with the approval of the fiscal court does not make an appointment within 90 days of July 11, 2022, the authority to fill Mr. Calder's position will pass to the Commission pursuant to KRS 74.020(4).⁹ Thus, the Commission will direct the Executive Director, through Commission Staff, to send a copy of this Order to the Pulaski County Judge Executive, which previously appointed Mr. Calder. Further, pursuant to KRS 74.020(10), Western Pulaski District shall notify the Commission within 30 days of any appointment to fill a board vacancy by the county judge executive with the approval of the fiscal court. Finally, to provide them notice with respect to the status of their applications, the Executive Director shall also send a copy of this Order to Don Calder and Charles Mitchell Robertson, who interviewed for the position.

IT IS THEREFORE ORDERED that:

1. The Executive Director shall serve a copy of this Order upon the Pulaski County Judge Executive; Don Calder; and Charles Mitchell Robertson.
2. Western Pulaski District shall notify the Commission within 30 days pursuant to KRS 74.020(10) of any appointment to fill a board vacancy by the county judge executive with the approval of the fiscal court.
3. This case is closed and removed from the Commission's docket.

⁹ As discussed in the December 27, 2022 Order, records produced by Western Pulaski District and the Pulaski County Court Clerk indicate that the Pulaski County Judge Executive with the approval of the fiscal court appointed Steve Davis on August 7, 2018, for a term ending July 11, 2022, such that his current term also recently ended and can be filled by the appropriate county judge executive with the approval of the fiscal court.

PUBLIC SERVICE COMMISSION



Chairman

Vice Chairman



Commissioner

ENTERED
AUG 05 2022
rcs
KENTUCKY PUBLIC
SERVICE COMMISSION

ATTEST:



Executive Director

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