



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KENTUCKY 40602
www.psc.state.ky.us
(502) 564-3940

October 21, 1998

Ms. Alisa B. Gatten
Nebo Water District
P.O. Box 147
Nebo, Kentucky 42441-0147

Dear Ms. Gatten:

Commission Staff is in receipt of your letter of August 26, 1998 in which you request an opinion on the status of a vacancy on the Nebo Water District's Board of Commissioners.

You state the following facts: On August 26, 1996, the term of Jimmie Arnold expired. On October 4, 1996, the Hopkins County Judge/Executive appointed a successor for Mr. Arnold whom the Hopkins County Fiscal Court did not approve. Based upon a letter from Public Service Commission Executive Director Don Mills dated December 4, 1996, Mr. Arnold believes that he has been reappointed to the Nebo Water District's Board of Commissioners.

KRS 74.020 governs the appointment of water district commissioners. It provides that commissioners "shall be appointed by the county judge/executive with the approval of the fiscal court." KRS 74.020(1)(a). It further provides that "a vacancy resulting from the expiration of a term shall be filled by the Public Service Commission 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." KRS 74.020(4).

KRS 65.008¹ provides additional guidance in those instances where a commissioner's term has expired and no appointment has been made. It states:

Unless otherwise provided by law, appointed members of district governing bodies shall serve until their successors are appointed and qualified. The failure of an appointing authority to appoint a successor or, 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

¹ KRS 65.008 applies to water districts. KRS 65.060 defines a special district to include any commission created pursuant to KRS 74.010 through 74.416.

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district governing body shall constitute the reappointment of that member for another term of office.

KRS 65.008(2).


While these statutes appear to conflict, they are easily reconciled. KRS 74.020 provides that a term of a water district commissioner is four years. After that term expires, the County Judge Executive must nominate a successor who must be approved by Fiscal Court. KRS 65.008 provides that until a successor is appointed and qualified, the water district commissioner's whose term expired continues to serve. If a successor is not nominated within 60 days of the expiration of the term, then the current commissioner is considered reappointed to his position. This reappointment, however, **must still be approved by Fiscal Court**. If such approval is not given within 90 days, then the Public Service Commission may fill the vacancy without any other agency's approval.

In the present case, Mr. Arnold continues to serve as a commissioner to the Nebo Water District Board of Commissioners. He holds this position only until his successor is appointed and qualified. Since the Hopkins County Judge/Executive nominated a successor within 60 days of the expiration of Mr. Arnold's term, Mr. Arnold **cannot be deemed** to have been reappointed by operation of law. Assuming arguendo that he was reappointed by operation of law, Hopkins County Fiscal Court must still approve his reappointment. As the Hopkins County Judge/Executive and Hopkins Fiscal Court have failed to fill the vacancy on the Nebo Water District Board of Commissioners, the Public Service Commission may act to fill it.

If future questions concerning Mr. Arnold's status arise, Nebo Water District may wish to consult with the Attorney General. Pursuant to KRS 15.020, the Attorney General is the legal adviser of all political subdivisions of the state and is required, when requested in writing, to furnish to them his written opinion touching any of their official duties.

This letter represents Commission Staff's interpretation of the law as applied to the facts presented. This opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Gerald Wuetcher, Commission counsel, at (502) 564-3940, Extension 259.

Sincerely,


Helen C. Helton
Executive Director