

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

MOUNTAIN WATER DISTRICT'S PETITION)	CASE NO.
FOR APPOINTMENT OF COMMISSIONERS)	2001-379
PURSUANT TO KRS 74.020(4))	

O R D E R

On November 6, 2001, Mountain Water District ("Mountain") filed a petition with the Commission, pursuant to KRS 74.020(4), requesting reappointment of two of its commissioners, Michael Litafik and Earl Sullivan. As grounds for its petition, Mountain states the terms of these commissioners expired on August 1, 2001, and that no commissioners have been appointed to replace them pursuant to procedures mandated by law. Attached to the petition is a May 30, 2001 letter from Mr. Litafik and Mr. Sullivan, in which they express interest in reappointment and explain that their continuation with the District would assist in timely and efficient completion of the over 30 million dollars' worth of water and sewer projects currently funded. They point out that they are familiar with the projects and with the duties of Mountain Water District commissioners in general. Another attachment to the petition is Resolution 01-05-014 of Mountain that expresses the commission's belief that the best interests of the people of Pike County will be served by retention of Mr. Litafik and Mr. Sullivan, in that they have the experience and knowledge to assist in maintaining Mountain's financial stability while overseeing the completion of the great number of ongoing construction projects.

KRS 74.020(4) provides, in pertinent part, 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.” Under the circumstances presented in the petition, this Commission’s authority to appoint commissioners for Mountain has been properly invoked. Moreover, the presence of the word “shall” in the statute indicates that Commission action is mandatory if the vacancies have not been filled in 90 days.

Immediately upon receipt of the petition, the Commission’s Executive Director sent a copy of the petition to the Honorable Karen F. Gibson, Pike County Judge/Executive, together with a cover letter requesting, among other things, that she advise the Commission of her intentions regarding this matter within 20 days of the date of the letter,

On November 28, the Judge/Executive filed a response requesting intervention. Clearly the Judge/Executive has a special interest in this case pursuant to 807 KAR 5:001, and her request is therefore granted. In addition, the Judge/Executive’s response describes certain events that have led to the current impasse in regard to appointment of water commissioners, and apprises us of, among other things, the existence of an Order of the Pike Circuit Court¹ requiring the members of the Pike County Fiscal Court to provide reasons for their approval or rejection of Golf Course Board nominees presented to them by the Judge/Executive. The Pike Circuit Court

¹ *Pike County Judge Executive Karen F. Gibson v. Magistrates of Pike County*, No. 01-CI-00958 (Pike Cir. Ct. Nov. 16, 2001).

order has been appealed by the Pike County Fiscal Court. The Judge/Executive requests that this Commission either [1] hold this action in abeyance until the judicial review of the Golf Course Board decision is concluded; or [2] appoint as water commissioners two persons presented by the Judge Executive.² On December 4, 2001, the Judge Executive submitted, via facsimile, portions of the minutes of the November 19, 2001 meeting of the Pike County Fiscal Court in which she presented, as proposed water commissioners, the names of Deloris Ann Cauley and Juanita Lyons. Attached to that pleading are board appointment forms containing information regarding Ms. Cauley and Ms. Lyons.

Having reviewed the petition, the Judge/Executive's motion and pleadings, and the applicable law, we conclude that the statute does not permit us to delay action in this case. We also conclude that the Pike County Circuit Court's order does not provide direct guidance with regard to our duties pursuant to KRS 74.020(4) to appoint water commissioners. KRS 74.020(4) is unique in the remedy it provides for failure of local authorities to agree on appointments: without reference to any reason for such failure, the statute simply provides that, after a certain period of time (90 days) has passed, the Public Service Commission "shall" make the appointments. Moreover, we are instructed to make those appointments "[n]otwithstanding the provisions of KRS 67.710," which prescribes generally the authority of a county judge/executive to make

² The Judge/Executive's pleading indicates, at 4, that the names and qualifications of the persons she wishes to appoint as Mountain commissioners are contained in Exhibit 3 to her pleading. Exhibit 3 to the November 28 pleading consists of the minutes of the March 19, 2001 Fiscal Court meeting in which named Jimmy Williamson and Harold Ray as her choices for members of the Golf Course Board. Judge/Executive's choices for Mountain were subsequently filed on December 4.

appointments with the approval of the fiscal court. Clearly, the General Assembly intended to cut short any period of uncertainty regarding water commissioner appointments.

Next, we conclude that time is of the essence in this proceeding. The vacancies at issue have existed for over 4 months, well past the time at which the statute instructs us to appoint commissioners. In addition, given the amount of construction in which Mountain is involved, the current situation is counterproductive and does not serve the public interest. Finally, there is no allegation of which this Commission is aware that Mr. Litafik and Mr. Sullivan, whose reappointments Mountain requests, are less than competent to fulfill their roles as commissioners. To the contrary, the record demonstrates that they have the full confidence of their colleagues on the Commission. In addition, they are familiar with the complex issues currently facing Mountain. We imply no dissatisfaction with the Judge/Executive's nominees. We simply conclude that, under the difficult circumstances present here, reappointment of experienced, proven commissioners constitutes the most reasonable and expeditious resolution to the current impasse.

Accordingly, in accordance with our statutory responsibility, and in order to ensure that Mountain Water District continues to operate with as little disruption as possible, we hereby grant the petition of Mountain Water District, and appoint Michael R. Litafik and Earl Sullivan to new terms of 4 years each.

IT IS SO ORDERED.

Done at Frankfort, Kentucky, this 7th day of December, 2001.

By the Commission

ATTEST:


Executive Director