

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 December 7, 2001, we issued our Order granting the petition of Mountain Water District (the District) and appointing incumbent Commissioners Michael Litafik and Earl Sullivan, pursuant to KRS 74.020(4), to 4-year terms. Subsequently, the Pike County Judge/Executive requested that we set aside the December 7 Order, arguing, among other things, that the Order impedes the will of the people of Pike County and that appointment of the Judge/Executive s appointees would adhere more closely to the statutory scheme. The District responded to the motion, pointing out that the Judge/Executive failed to submit appointee names for fiscal court review within the 90 days provided by KRS 74.020(4). The District also states that the Judge/Executive offers no facts to justify reconsideration of our initial opinion.

We herein affirm our conclusion that the most reasonable and expeditious resolution of the impasse with which we were presented was reappointment of the two experienced incumbents. We also respond to the Judge/Executive s claim that we could have exercised sound discretion with regard to holding this matter in abeyance ¹ pending the outcome of the legal proceedings that concern prior appointments in Pike County. First, as we stated in our December 7 Order, the court proceedings in question

¹ Petition for Rehearing of Pike County Judge/Executive Karen Gibson at 4.

do not concern our duties pursuant to KRS 74.020(4). Next, the Judge/Executive errs in concluding that we have authority in a case of this nature to hold a decision in abeyance. KRS 74.020(4) is clear, providing a 90-day timeframe after which this Commission shall appoint water commissioners. There is no discretionary language in this statute.

Next, we address the Judge/Executive's claim that appointing her nominees rather than Mr. Litafik and Mr. Sullivan would more closely reflect the statutory scheme. We believe that our action in this case does reflect the statutory scheme which governs our actions here: in an impasse of this nature, this Commission has sole authority and immediate responsibility to appoint water commissioners. Moreover, we continue to believe that, under the circumstances as outlined in our December 7 Order, appointing the incumbents rather than new commissioners was the more reasonable course.

Judge/Executive Gibson observes in her Petition for Rehearing that the members of this Commission are not elected by the public.² It is perhaps for that reason that the General Assembly gave this Commission the duty to appoint commissioners when the initial appointment process, which is conducted by elected officials, results in deadlock. Our mandate is to follow the instructions given us by the General Assembly. We have done so.

For the foregoing reasons, IT IS HEREBY ORDERED that the Petition for Rehearing is hereby denied.

² Petition for Rehearing of Pike county Judge/Executive Karen Gibson at 3.

Done at Frankfort, Kentucky, this 29th day of January, 2002.

By the Commission

ATTEST:

A handwritten signature in black ink, appearing to read "Charles McQuinn", written over a horizontal line.

Executive Director