

**COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION**

**In the Matter of:**

<b>PETITION FOR REHEARING</b>	)	
<b>OF CORINTH WATER DISTRICT</b>	)	
<b>AND ITS COMMISSIONER CHERISH</b>	)	
<b>KENNEDY PURSUANT TO KRS 278.400</b>	)	
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	)	
	)	<b>CASE NO.</b>
	)	<b>2024-00153</b>

**PETITION FOR REHEARING**

Corinth Water District and its Commissioner Cherish Kennedy, by and through counsel, and pursuant to KRS 278.400, hereby tenders this Petition for Rehearing to the Commission regarding the August 8, 2024 Order issued in this matter. That Order, respectfully, did not apply the applicable law, referencing instead a Commission matter that has been superseded by statute. Additionally, that Order failed to apply the plain language of the operative statute, KRS 74.020, under which Ms. Kennedy submitted her Application for an Enlargement or Extension to complete required water district training in order to qualify for a salary of more than \$3,600.00 and under which the Commission has granted multiple other requests for extension by other applicants. By failing to apply the correct law and by failing to give effect to the plain language of that statute, the Commission improperly denied Ms. Kennedy’s application for an enlargement of time to retroactively complete training needed to receive a salary of more than \$3,600.00 in 2023. Once both the spirit and the substance of that statute is effectuated, it becomes clear that Ms. Kennedy does qualify for this enlargement of time, that the Commission’s August 8, 2024 Order should be reversed, and her May 31, 2024 Order should be granted.

## RELEVANT FACTUAL BACKGROUND

Ms. Kennedy is a Commissioner of the Corinth Water District.<sup>1</sup> She was appointed to the Corinth Water District in December 2019 for a term ending in December 2024.<sup>2</sup> On May 31, 2024, Ms. Kennedy electronically submitted an Application for an Enlargement or Extension of KRS 74.020(6). That statute states that water district commissioners in the Commonwealth:

[S]hall receive an annual salary of not more than thirty-six hundred dollars (\$3,600), which shall be paid out of the water district fund, except that beginning January 1, 1999, **and subject to subsection (9) of this section**, each commissioner who completes during an educational year a minimum of six (6) instructional hours of water district management training approved by the Public Service Commission may receive an annual salary of not more than six thousand dollars (\$6,000) to be paid out of the water district fund.

(KRS 74.020(6)) (Emphasis added)

KRS 74.020(9), which as set out above, is referenced in KRS 74.020(6) states the “Commission may grant a reasonable extension of time, not to exceed six (6) months, for completing the training requirements of subsections (6), (7), and (8) of this section for good cause shown.” It was on the basis of KRS that Ms. Kennedy submitted her May 31, 2024 Application for Enlargement or Extension of KRS 74.020(6). On this point, Ms. Kennedy’s Application stated at its onset “[p]ursuant to KRS 74.020(9), Corinth Water District, and individual commissioner, Cherish Kennedy hereby submits this Application for an Enlargement or Extension of KRS 74.020(6) authorizing a less than six-month extension of time, until June 30, 2024, for Commissioner Kennedy to complete required water district training. . .”<sup>3</sup> Ms. Kennedy’s application for this extension stated that that she received more than \$3,600.00 in salary in 2023

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<sup>1</sup> See Application for Enlargement or Extension of KRS 74.020(6) submitted May 31, 2024 at ¶8.

<sup>2</sup> *Id.* See also Notice of Filing submitted July 12, 2024.

<sup>3</sup> See Application for Enlargement or Extension of KRS 74.020(6) submitted May 31, 2024 at pg. 1.

for her work as a commissioner of the Corinth Water District.<sup>4</sup> The application also detailed that she was going through a difficult divorce in 2023 while maintaining custody of her children and working a demanding, full-time job.<sup>5</sup> As a result of these things, she inadvertently failed to complete six hours of training in 2023.<sup>6</sup> When she realized she failed to do so, she submitted an application to receive an extension of time complete this training as KRS 74.020(9) permits.<sup>7</sup> Hoping that her Application would be granted by the Commission, Ms. Kennedy participated in 12 hours of training at Carter Caves State Park in June 2024 – that is, enough to satisfy her training requirements for both 2023 and 2024.<sup>8</sup>

On August 8, 2024, the Commission issued an Order denying Ms. Kennedy’s Application. In that Order, the Commission found This Petition for Rehearing follows the Commission’s denial of Ms. Kennedy’s application.

### **ARGUMENT**

The Commission improperly relied on precedent that is no longer in effect to deny Ms. Kennedy’s extension request. In doing so, the Commission also ignored the plain language of the statutory provisions upon which Ms. Kennedy’s extension request was based. The Commission’s error as it relates to these issues is further evidenced by the fact that despite the Commission stating it does not have the authority to grant Ms. Kennedy’s request, the Commission has utilized KRS 74.020(9) to consider and grant similar requests. This should be sufficient for the Court to overturn its August 8, 2024 Order.

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<sup>4</sup> *Id.* at ¶8.

<sup>5</sup> *Id.* at ¶¶ 10-11.

<sup>6</sup> *Id.* at ¶12.

<sup>7</sup> *See generally* Application for Enlargement or Extension of KRS 74.020(6) submitted May 31, 2024.

<sup>8</sup> Exhibit A: Certificate of Attendance for 12 Hours of Training provided to Cherish Kennedy on June 25, 2024.

**I. THE COMMISSION UTILIZED A PRECEDENT NO LONGER IN EFFECT TO JUSTIFY ITS DENIAL OF MS. KENNEDY’S APPLICATION.**

Explaining its denial of Ms. Kennedy’s KRS 74.020(9) application request, the Commission states that it “has no authority to grant Ms. Kennedy’s request in this matter.”<sup>9</sup> In support of this position, the Commission cites a 2019 matter: PSC Case No. 2019-0054, *In the Matter of: Application of Kara Wilson, Commissioner of Jonathan Creek Water District for Extension of Time to complete Water District Management Training Due to Hardship*. But the precedent established by the *Kara Wilson* matter – which the Commission relies on to deny Ms. Kennedy’s application – is no longer valid. Instead, the proposition set forth in *Kara Wilson* (that the Commission cannot authorize extensions for mandatory training) has been abolished and was superseded by statute. Specifically, KRS 74.020(9) codified that the Commission *can* grant requests for extensions. This statutory provision was enacted in 2021 – two years after the Commission’s *Kara Wilson* Order. We know this because the Commission has instructed this is so.

A year after the enactment of KRS 74.020(9), the Commission explained in *Electronic Application of Knott County Water and Sewer District, et al.* that the substance of *Kara Wilson* was no longer binding.<sup>10</sup> Instead, the Commission instructed that KRS 74.020(9) governed requests for extensions of mandatory training even in instances when a commissioner has received more than \$3,600 in annual compensation. In *Knott County Water and Sewer District*, the Commission succinctly explained:

KRS 74.020 requires commissioners to receive six hours of training annually to receive an additional \$2,400 to their annual salary totaling not more than \$6,000. **KRS 74.020(9), which provides the Commission the ability to grant an extension for ‘good cause’ was only recently effective as of March 2021 to**

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<sup>9</sup> Order Denying Issued August 8, 2024 at pg. 3.

<sup>10</sup> See generally Order issued on April 13, 2022 in PSC Case No. 2022-00029.

**address hardships like commissioners who were ill and in dire circumstances, as have come before the Commission in the past.<sup>11</sup>**

In the *Knott County Water and Sewer District* matter, the Commission does not make a holding like it does here and state that it “has no authority to grant [the] request in [the] matter.”<sup>12</sup> By contrast, it makes the opposite holding and makes clear that the Commission does have this authority by way of KRS 74.020(9) which “was only recently effective as of March 2021. . .”<sup>13</sup> In other words, the *Kara Wilson* precedent was superseded by the enactment of KRS 74.020(9).

The Commission has the authority that it stated in the Order denying Ms. Kennedy’s May 31, 2024 Application that it lacked. The Commission’s holding in the *Knott County Water and Sewer District* matter reaffirms this.<sup>14</sup> The Commission should reverse its August 8, 2024 Order and grant Ms. Kennedy’s request.

**II. THE PLAIN LANGUAGE OF KRS 74.020 ALLOWS THE COMMISSION TO GRANT MS. KENNEDY’S REQUEST FOR AN EXTENSION.**

Not only does the Commission have the authority to grant Ms. Kennedy’s extension based on its own holding in *Knott County Water and Sewer District*, but the plain language of KRS 74.020(9) also makes clear that it possesses this authority. Once this plain language is examined and relied upon, it becomes clear that the Commission erred in its August 8, 2024 Order. This plain language is also sufficient for the Commission to overturn that Order and grant Ms. Kennedy’s application.

While the Commission examines portions of KRS 74.020, it fails to examine the plain language which allows it to grant the extension sought by Ms. Kennedy. Instead, the Commission

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<sup>11</sup> *Id.* at pg. 2.

<sup>12</sup> Order Denying Issued August 8, 2024 at pg. 3.

<sup>13</sup> *See generally* Order issued on April 13, 2022 in PSC Case No. 2022-00029 at pg. 2.

<sup>14</sup> *See generally Id.*

offers a summary of KRS 74.020(6), KRS 74.020(7), and KRS 74.020(9). Summarizing these provisions, the Commission states:

KRS 74.020(6) and (7)(a) is plain and unambiguous. It first imposes a mandate through the use of the term ‘shall’ that prohibits a water district commissioner from receiving more than \$3,600 in compensation annually. It then creates an exception to that mandate by permitted a water district commissioner who completes six hours of annual training between January 1 and December 31 to receive up to \$6,000 in annual compensation during that period. It makes no provision for the Commission to extend the time allowed for water district commissioners to complete the annual training necessary to receive annual compensation in excess of \$3,600. The Commission notes that KRS 74.020(9) contains language allowing the Commission to grant an extension of time for the commissioners’ initial training requirement; however, no such option exists as it relates to the period of training required for increased compensation.<sup>15</sup>

While the Commission summarizes these subsections of KRS 74.020 in August 8, 2024 Order, that Order makes no mention of the qualifying language found in KRS 74.020(6) which expressly allows for a commissioner to receive increased compensation “subject to subsection (9) of this chapter.” This, of course, would be KRS 74.020(9) which allows the Commission to “grant a reasonable extension of time, not to exceed six (6) months, for completing the training requirements of subsections (6), (7), and (8) of this section for good cause shown.” The plain language of KRS 74.020 makes clear that the Commission may grant Ms. Kennedy’s application.

Pursuant to well-settled statutory interpretations rules, courts are limited in the interpretation of the statutory words and phrases to their plain and ordinary meaning, *Baker v. White*, 65 S.W.2d 1022 (1933), and courts cannot add to or subtract from the statutory language adopted by the legislature. *Alderman v. Bradley*, 957 S.W.2d 264, 266, (Ky. App. 1997). In short, “the plain meaning of the statutory language is presumed to be what the [L]egislature intended . . . [W]e assume that the ‘[Legislature] meant exactly what it said, and said exactly what it meant.’”

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<sup>15</sup> Order Denying Issued August 8, 2024 at pg. 3.

*Revenue Cabinet v. O’Daniel*, 153 S.W.3d 815, 819 (Ky. 2005) (Internal citations omitted). Here, the language of KRS 74.020(9) is plain and unambiguous – it allows the Commission to grant the extension Ms. Kennedy seeks even though she received increased compensation as permitted by KRS 74.020(6).

By now finding to the contrary, the Commission has imposed a requirement that does not exist in the plain language of the statute. But just as it is well settled law that a statute must be interpreted pursuant to its plain language, it is also well settled law that where, as here, a statute is intelligible on its face, the courts are not at liberty to supply words, insert phrases, or make additions to statutory language to cure a possible omission. *Commonwealth v. Harrelson*, 14 S.W.3d 541, 545-546 (Ky. 2000) (citations omitted). *See also Goben v. Keeney*, 626 S.W.3d 692, 698 (Ky. App. 2021) (“We are not free to add language to the regulation by judicial fiat.”). Nothing in KRS 74.020 prohibits the Commission from granting Ms. Kennedy’s application the August 8, 2024 Order indicates.

**A. Previous Orders of the Commission Demonstrate That It Has the Authority to Grant the Extension Ms. Kennedy Seeks.**

The Commission did not make a finding that the reasons offered by Ms. Kennedy in her May 31, 2024 Application failed to satisfy the “good cause” standard found in KRS 74.020(9). Indeed, the circumstances described by Ms. Kennedy in her May 31, 2024 Application seem to be the type of “dire circumstances” that constitute the “good cause” required for which the Commission has ability to grant extensions.<sup>16</sup>

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<sup>16</sup> *See generally* Order issued on April 13, 2022 in PSC Case No. 2022-00029 at pg. 2.

Rather, that “[e]ven if the Commission believed that Ms. Kennedy had established good cause for her request, the Commission has no authority to grant Ms. Kennedy’s request in this matter.”<sup>17</sup> But this stands in contrast to previous orders issued by the Commission.

In one such order issued earlier this year, in the matter of *Electronic Application of Corinth Water District and Individual Commissioner Ashley Lauderman*, the Commission granted a request for one of Ms. Kennedy’s fellow Corinth Water District commissioners, Ashley Lauderman.<sup>18</sup> In that Order, the Commission held:

KRS 74.020(9) allows the Commission to grant a reasonable extension of time, not to exceed six months, for good cause shown. . . The Applicants’ request for an extension through June 30, 2024, for Commissioner Lauderman to complete the required six hours of training to receive a salary greater than \$3,600 for the 2023 calendar year, is granted.<sup>19</sup>

In another matter unrelated to the Corinth Water District and its commissioners, the Commission held in the *Electronic Application of North Nelson Water District and Robert Cecil* that the 12-hour training requirement for new commissioners set forth KRS 74.020(8)(b) could be extended by KRS 74.020(9) on account of a pre-planned family vacation.<sup>20</sup> The language of the new commissioner training requirement in KRS 74.020(8) mirrors that required for a commissioner receiving increased compensation in KRS 74.020(6). The former states that “[w]ithin 12 months of initial appointment, each commissioner shall complete the program of instruction. . . any commissioner who fails to complete the program within 12 months of his or her appointment shall forfeit his or her office. . .” KRS 74.020(8). As the Commission made clear in its Order denying Ms. Kennedy’s May 31, 2024 application, “the use of the term ‘shall’ [] prohibits a water district

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<sup>17</sup> See Order Denying Issued August 8, 2024 at pg. 3.

<sup>18</sup> See generally Order issued on May 3, 2024 in PSC Case No. 2024-00094.

<sup>19</sup> *Id.* at pgs. 1-2.

<sup>20</sup> See Order issued on October 3, 2023 in PSC Case No. 2023-00254 at pgs. 1-3.



from receiving more than \$3,600 in compensation annually. . . [The statute] makes no provision for the Commission to extend the time allowed for water district commissioners to complete the annual training necessary to receive annual compensation in excess of \$3,600.”<sup>21</sup> While interpreting the statute this way now, another interpretation was utilized in granting the application for an extension of new commissioner training sought by a commissioner in the *North Nelson Water District*.<sup>22</sup>

But the cases referenced herein are not exceptions to the Commission’s general rule. Instead, the Commission’s utilization of KRS 74.020(9) to consider requests for extension seems to the norm. In addition to the *North Nelson Water District*, *Knott County Water and Sewer District*, and *Lauderman* matters referenced and examined herein, the Commission has also demonstrated in other matters that it does, in fact, possess the authority to utilize this statutory provision to grant requests for extensions to complete training similar to the one submitted by Ms. Kennedy in this matter.<sup>23</sup> While the Commission indicated in its August 8, 2024 Order that it did not possess the authority to grant Ms. Kennedy’s Application, its previous holdings state otherwise. These holdings demonstrate that Commission *does* have this authority.<sup>24</sup>

### **CONCLUSION**

Ms. Kennedy’s May 31, 2024 Application for an Extension to complete her 2023 training in order to receive increased compensation was improperly denied. It was never properly

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<sup>21</sup> Order Denying Issued August 8, 2024 at pg. 3.

<sup>22</sup> *See generally* Order issued on October 3, 2023 in PSC Case No. 2023-00254 at pgs. 1-3.

<sup>23</sup> *See* Order issued on August 5, 2022 in PSC Case No. 2022-00213; *See also* Order issued on January 19, 2023 in PSC Case No. 2022-00444.

<sup>24</sup> The Commission’s continued denial of Ms. Kennedy’s request in spite of its own previous holdings and in spite of the plain language of KRS 74.020 may constitute arbitrary action prohibited by Kentucky’s constitution. *See Commonwealth Transportation Cabinet v. Cornell*, 796 S.W.2d 591, 594 (Ky. App. 1990).

considered. For the reasons set forth above, the Commission's August 8, 2024 Order should be overturned and Ms. Kennedy's application should be granted.

Respectfully submitted,

*/s/ Derek Miles*

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and its Commissioner Cherish Kennedy*

### **Certification**

I hereby certify that a copy of this Application has been served electronically on all parties of record through the use of the Commission's electronic filing system on this the 28<sup>th</sup> day of August 2024, and there are currently no parties that the Commission has excused from participation by electronic means. Pursuant to the Commission's July 22, 2021 Order in Case No. 2020-00085, a paper copy of this filing has not been transmitted to the Commission.

*/s/ Derek Miles*

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Derek Miles

# **EXHIBIT A**

*This Certificate of Attendance  
is Being Presented to*

*Cherish Kennedy*

*Upon Completion of*

*12 Hours*

*of Water Training Instruction at the*

*Kentucky Public Service Commission*

*2024 Water Training Seminar*

*June 18-19, 2024*

*Kentucky Public Service Commission*

*Signed on this 25th day of June, 2024*



*Kent Chandler, Chairman*

*Kentucky Public Service Commission*

