

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

ELECTRONIC APPOINTMENT OF)	
COMMISSIONER TO FILL AN UNEXPIRED TERM)	CASE NO.
ON THE BOARD OF COMMISSIONERS OF)	2023-00240
CRITTENDEN-LIVINGSTON COUNTY WATER)	
DISTRICT)	

ORDER

This case was initiated pursuant to KRS 74.020(4) to fill a vacancy that exists on the board of commissioners of Crittenden-Livingston County Water District (Crittenden-Livingston District). In Case No. 2022-00248, the Commission found that a vacancy existed on Crittenden-Livingston District's board of commissioners due to Dennis Fleet's failure to comply with KRS 74.020(8).¹ By this Order, the Commission appoints Tim Capps of Livingston County, Kentucky, to fill the vacancy.

Crittenden-Livingston District, a water district organized in 1983 pursuant to KRS Chapter 74, owns and operates facilities that distribute water for compensation to approximately 3,694 customers in Crittenden and Livingston counties, Kentucky.² As of December 31, 2021, Crittenden-Livingston District had total assets of \$19,240,731.

¹ Case No. 2022-00248, *Electronic Investigation of Possible Vacancy on the Board of Commissioners of Crittenden-Livingston County Water District Due to Dennis Fleet's Alleged Violation of KRS 74.020(8)(b)* (Ky. PSC May 2, 2023) at 4.

² *Annual Report of Crittenden-Livingston County Water District to the Public Service Commission for Calendar Year Ended December 31, 2021* (2021 Annual Report) at 9 and 49.

For the calendar year ending December 31, 2021, it had total operating revenues of \$2,934,443.³

LEGAL STANDARD

KRS 74.020(1) provides that a water district shall be administered by a board of commissioners which shall control and manage the affairs of the district.

KRS 74.020(1)(a) states that members of the board of commissioners shall be residents of the district, or of any incorporated or unincorporated area served by the district in the county in which the district was originally established.

KRS 74.020(4) requires vacancies to be filled by the same appointing authority which is empowered to make the original appointment except when a vacancy on the board of commissioners exists for more than 90 days. The statute further provides that a vacancy resulting from the expiration of a term or death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if the vacancy exists for more than 90 days.⁴

Case No. 2012-00052 provides the criteria the Commission must use when filling a vacancy. It states that the Commission must consider the totality of the circumstances, including the education, business and management experience, and personal history of the proposed candidates, and the existing financial and operating condition of the water district.⁵

³ 2021 Annual Report at 49.

⁴ KRS 74.020(4).

⁵ See, e.g., Case No. 2012-00052, *Request to Fill Vacancies on Western Pulaski County Water District Board of Commissioners* (Ky. PSC Jan. 16, 2013) at 3.

DISCUSSION

In Case No. 2022-00248, the Commission found that Dennis Fleet, a member of Crittenden-Livingston District's board of commissioners, had failed to complete the new water district commissioner training within one year of his appointment pursuant to KRS 74.202(8) and therefore forfeited his position on January 1, 2022.⁶ The Commission further found that the position had been vacant for more than 90 days, and therefore had the authority to fill that position.⁷

On August 8, 2023, the Commission initiated this proceeding to fill the existing vacancy and to ensure notice to all interested parties, ordered that the Crittenden County Judge/Executive, the Crittenden County Fiscal Court, the Crittenden County Attorney, the Livingston County Judge/Executive, the Livingston County Fiscal Court, the Livingston County Attorney be served with a copy of the Order. The Crittenden-Livingston District's board of commissioners was noticed and made a party to this proceeding. The Commission further ordered that notice of the vacancy was to be published in the newspaper with the largest circulation in the counties.⁸ Notice was published on August 18, 2023. On August 29, 2023, Mr. Capps submitted his qualifications and nominated himself for the vacant position. No other nominations were received.

⁶ Case No. 2022-00248, *Electronic Investigation of Possible Vacancy on the Board of Commissioners of Crittenden-Livingston County Water District Due to Dennis Fleet's Alleged Violation of KRS 74.020(8)(b)* (Ky. PSC May 2, 2023) at 4.

⁷ Case No. 2022-00248, *Electronic Investigation of Possible Vacancy on the Board of Commissioners of Crittenden-Livingston County Water District Due to Dennis Fleet's Alleged Violation of KRS 74.020(8)(b)* (Ky. PSC May 2, 2023) at 3-4.

⁸ Order (Ky. PSC Aug. 8, 2023) at 3.

FINDINGS

Having reviewed the record, Mr. Capps experience, and being otherwise sufficiently advised, the Commission finds that Mr. Capps is the best suited candidate and that there is no information to suggest that he is unqualified to serve in the designated position. Mr. Capps resides in Crittenden-Livingston District's territory; is of legal age; possesses adequate education, business skills, and experience to perform the duties of water district commissioner; and does not have any legal disability that would disqualify him from serving in the position. Accordingly, the Commission finds that Mr. Capps should be appointed to fill the vacancy on Crittenden-Livingston District's board of commissioners identified in the Commission's May 2, 2023 Order in Case No. 2022-00248.

 IT IS THEREFORE ORDERED that:

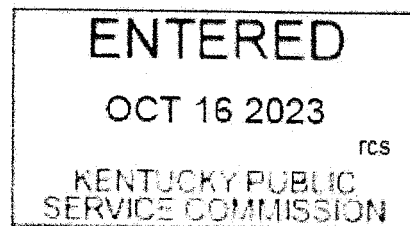
1. Tim Capps is hereby appointed to fill the vacant seat identified in Case No. 2022-00248.
2. The term that Mr. Capps is being appointed to fill shall expire on January 1, 2025.
3. The Executive Director shall serve a copy of this Order upon the Crittenden County Judge/Executive, the Crittenden County Fiscal Court, the Crittenden County Attorney, the Livingston County Judge/Executive, the Livingston County Fiscal Court, the Livingston County Attorney, and Crittenden-Livingston District's board of commissioners.
4. This proceeding is closed and removed from the Commission's docket.

PUBLIC SERVICE COMMISSION

Hurt Chla
Chairman

Cheryl Hubbard by KAC
Vice Chairman w/permission

Mary Pat Reger
Commissioner



ATTEST:

Linda L. Bridwell
Executive Director

Perry A. Newcom
Judge-Executive
Crittenden County Judge-Executive
107 South Main St.
Suite 208
Marion, KENTUCKY 42064

*Crittenden-Livingston County Water D
Crittenden-Livingston County Water District
620 East Main Street
P. O. Box 495
Salem, KY 42078

Allen Wilson
Livingston County Attorney
321 Court St.
P.O. Box 97
Smithland, KENTUCKY 42081

Livingston County Fiscal Court
321 Court St.
Smithland, KENTUCKY 42081

Crittenden County Fiscal Court
107 S. Main St., Ste 208
Marion, KENTUCKY 42064

Garrett Gruber
Livingston County Judge/Executive
335 Court St
Smithland, KENTUCKY 42081

*Robert B. Frazer
Frazer Law Office
200 S. Main Street
P. O. Box 361
Marion, KENTUCKY 42064

*Crittenden-Livingston County Water District
620 East Main Street
P. O. Box 495
Salem, KY 42078