



2009-00209

Office of Pike County Judge/Executive

WAYNE T. RUTHERFORD

CERTIFIED MAIL; RETURN RECEIPT REQUESTED

July 9, 2009

Mr. Jeff Derouen
Executive Director
Public Service Commission
211 Sower Blvd.
P.O. Box 615
Frankfort, KY 40602-0615

RECEIVED

JUL 13 2009

PUBLIC SERVICE
COMMISSION

Pike County Courthouse
146 Main Street
Pikeville, Kentucky 41501
Office: (606) 432-6247
Fax: (606) 432-6242

Re: Mountain Water District Board of Commissioners
Residency Issue

Dear Mr. Derouen:

On May 15, 2009, I responded to your letter of inquiry concerning the non-residency of two members of the Mountain Water District Board. In that letter I opined, based on legal advice, that the Pike County Judge/Executive had no statutory or any other type of authority to remove a duly appointed member of a water board. In fact, I referred to a 1978 Attorney General Opinion (OAG 78-215) which expressly stated that the county judge had no such authority. The Public Service Commission's very capable legal staff did not choose to challenge my opinion; and, I must therefore assume that it is correct.

Subsequent to enactment of the recent budget bill containing the controversial language regarding the issue of residency of water board members, certain facts have been brought to my attention which I believe require that my letter of May 15 be supplemented. These facts are as follows: 1) The Mountain Water District serves customers within the incorporated area of the City of Pikeville; and, 2) The two members of the Mountain District Board in question are residents of and reside within the corporate boundary of the City of Pikeville.

KRS 74.020(1)(a) states in pertinent part as follows: "Members of the board shall be residents of the district, or of any incorporated or unincorporated area served by the district in which the district was originally established...." [emphasis added.] Because the two members of the Mountain Water District Board in question reside within an incorporated area (the City of Pikeville) served by the District and because the incorporated area lies within Pike County, the county in which the District was originally



established, it appears that the residency requirement of the statute is satisfied, the budget bill language notwithstanding. The language in the budget bill therefore appears to be superfluous with regard to the question of residency of these two members.

In closing, I might suggest that the Commission propose that the legislature, in its next regular session, make the necessary amendment to the Kentucky Revised Statutes to allow for removal of a board member when that board member does not meet the residency requirement of the statute.

Sincerely,


Wayne T. Rutherford