

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

REQUEST TO FILL VACANCY ON THE)
BOARD OF COMMISSIONERS OF HENRY) CASE NO. 2012-00450
COUNTY WATER DISTRICT NO. 2)

ORDER

Henry County Water District No. 2 ("Henry District No. 2") has advised the Commission in writing of the existence of a vacancy on its Board of Commissioners due to the expiration of the term of Water District Commissioner Merle Brewer. Mr. Brewer's term ended on February 13, 2012. No action was taken to fill the vacancy prior to May 14, 2012. On August 22, 2012, the members of Henry County Fiscal Court voted for the appointment of Ms. Denise Coombs to fill the vacancy.

KRS 74.020(4), which addresses the appointment of members to the boards of commissioners of water districts, states:

Vacancies shall be filled by the same appointing authority which is empowered to make the original appointment. Vacancies resulting from cause other than expiration of the term shall be filled for the unexpired term only. Notwithstanding the provisions of KRS 67.710, 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.

As the position has been vacant for more than 90 days, the Commission has the statutory duty and the exclusive authority to fill it. While a county judge/executive and a county fiscal court may reach agreement on the vacant position, they lack authority to fill the vacancy once it has remained unfilled for more than 90 days. Any action on their

part to appoint and approve a candidate at that time has limited legal effect and constitutes only a recommendation to the Commission.¹

The Commission recognizes that deference should be accorded to local elected officials when filling vacancies on a water district's board of commissioners. We have previously declared:

While the Commission has exclusive authority to fill vacancies that exist for 90 days or more, we will defer to the local elected officials in those instances where the local appointing and approval authorities have reached agreement on a candidate. Absent unusual circumstances that raise clear concerns about an agreed candidate's qualifications, such deference is appropriate because local officials generally have a better understanding of the candidates' qualifications and of the water district's needs and because these officials are directly accountable to the water district's customers through the ballot box.²

Accordingly, the Commission finds that a proceeding should be initiated to determine whether Ms. Coombs should be appointed. We will limit the scope of our review to determining whether Ms. Coombs meets the constitutional and statutory requirements for the office of water district commissioner.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to fill the vacancy on Henry District No. 2's Board of Commissioners that was created through the expiration of the term of Merle Brewer.
2. Henry District No. 2 and Denise Coombs are made parties to this proceeding.

¹ See Case No. 2008-00395, *Request to Fill Existing Vacancies on the Board of Commissioners of Letcher County Water and Sewer District* (Ky. PSC Jan. 28, 2009).

² Case No. 2007-00493, *Request for Assistance in Appointment of Breathitt County Water District Commissioners* (Ky. PSC Mar. 20, 2008) at 4-5.

3. Any party filing documents with the Commission shall serve a copy of those documents upon all other parties.

4. Service of any document or pleading shall be made in accordance with 807 KAR 5:001, Section 3(7).

5. Ms. Coombs shall file with the Commission the original and two copies of the information listed in Appendix A. Ms. Coombs' failure to file the requested information in a timely manner shall be considered as notice that she does not wish to be considered for appointment to Henry District No. 2's Board of Commissioners.

6. Henry District No. 2 shall file with the Commission the original and two copies of the information listed in Appendix B.

7. a. The information requested herein is due on or before November 9, 2012. Responses to requests for information shall be appropriately bound, tabbed and indexed and shall include the name of the witness responsible for responding to the questions related to the information provided, with copies to all parties of record and ten copies to the Commission.

b. Each response shall be answered under oath or, for representatives of a public or private corporation or a partnership or association or a governmental agency, be accompanied by a signed certification of the preparer or person supervising the preparation of the response on behalf of the entity that the response is true and accurate to the best of that person's knowledge, information, and belief formed after a reasonable inquiry.

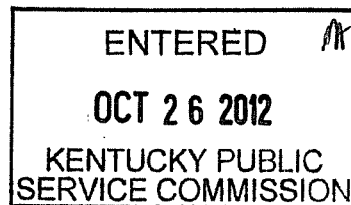
c. A party shall make timely amendment to any prior response if it obtains information which indicates that the response was incorrect when made or, though correct when made, is now incorrect in any material respect.

d. For any request to which a party fails or refuses to furnish all or part of the requested information, that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

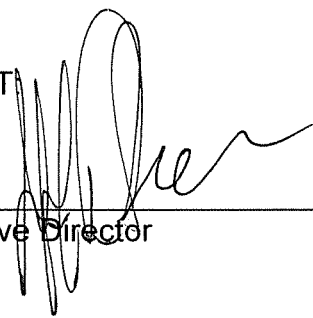
e. Careful attention shall be given to copied material to ensure that it is legible.

8. The Executive Director shall serve a copy of this Order upon the Henry County Judge Executive, the Clerk of Henry County Fiscal Court, and the Henry County Attorney.

By the Commission



ATTEST



Executive Director

APPENDIX A

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2012-00450 DATED **OCT 26 2012**

1. Provide your resume or curriculum vitae.
2. State your date of birth.
3. State your current street address and your current mailing address (if different from your street address).
4. State whether you have ever been convicted of violating any law (other than minor traffic offenses). If yes, list the conviction, the court that adjudged the sentence, and date and place.
5. State whether you reside in Henry District No. 2's territory.
6. State whether you have fought a duel with deadly weapons or sent or accepted a challenge to fight a duel with deadly weapons, acted as second in carrying a challenge, or aided or assisted any person doing so.
7. State whether you are a customer of Henry District No. 2.
8. Describe your educational background.
9. List all positions that you currently hold with any local, state, or federal governmental entity.
10.
 - a. List all non-governmental organizations and non-profit corporations for which you serve as an officer.
 - b. For each organization and corporation listed, state whether the organization or corporation transacts business with Henry District No. 2.
11. List all contracts that you have ever entered into with Henry District No. 2 to provide goods or services. Provide a copy of each contract.

12. List all business transactions that you have had with Henry District No. 2 in a personal or non-official capacity.

13. List all family members that Henry District No. 2 currently employs and the position that each family member holds. State the date on which each family member began his or her employment with Henry District No. 2.

14. List all family members that Henry District No. 2 has previously employed and the position that each family member held. State the dates on which each family member began and ended his or her employment with Henry District No. 2.

APPENDIX B

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2012-00450 DATED OCT 26 2012

1. List all contracts that Denise Coombs has entered into with Henry District No. 2 to provide goods or services. Provide a copy of each contract and the minutes of the meeting of the Henry District No. 2 Board of Commissioners in which the contract was approved.
2. List all of Ms. Coombs's family members that Henry District No. 2 currently employs and the position that each family member holds. State the date on which each family member began his or her employment with Henry District No. 2.
3. List all of Ms. Coombs's family members that Henry District No. 2 has previously employed and the position that each family member held. State the dates on which each family member began and ended his or her employment with Henry District No. 2.

Hon. John Brent
Henry County Judge/Executive
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