

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

AN INVESTIGATION OF A POSSIBLE VACANCY ) CASE NO.  
ON THE BOARD OF COMMISSIONERS OF ) 2015-00305  
ADAIR COUNTY WATER DISTRICT )

ORDER

By letter dated August 14, 2015, Michael Lee Stephens, County Judge/Executive of Adair County, Kentucky, advised the Commission that prior to his election as County Judge/Executive, there was a vacancy on the Board of Commissioners of Adair County Water District ("Adair County District") resulting from the expiration of a Commissioner's term, and the vacancy was not filled within 90 days of the expiration of the term. According to the County Judge/Executive, the term of the commissioner ended on August 1, 2014, and the members of the Adair County Fiscal Court did not vote to approve the appointment of a candidate to fill the vacancy until December 9, 2014.

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 KRS 67.710, a vacancy resulting from the expiration of a term or the death, resignation, or removal of the incumbent shall be filled by the Public Service Commission if, within ninety (90) days following the vacancy, the vacancy has not been filled by the appropriate county judge/executive with approval of the fiscal court.

Although the Adair County District did not advise the Commission in writing in 2014 of the existence of a vacancy pursuant to KRS 74.020(9(a), the County Judge/Executive's letter to the Commission indicates that a vacancy on the Adair County District's Board went unfilled for more than 90 days following expiration of the term creating the vacancy. Assuming that the position was vacant for more than 90 days, the Commission has the statutory duty and exclusive authority to fill it. While a county judge/executive and a county fiscal court may reach agreement on a candidate for 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 after that time constitutes only a recommendation to the Commission.<sup>1</sup>

Accordingly, the Commission finds that this proceeding should be initiated to determine whether a vacancy did exist for more than 90 days on the Adair County District's Board of Commissioners. The Commission will make the Adair County District a party to this case and request that it provide certain information which is set forth in a data request attached hereto as an Appendix. The Commission will also request, by separate letter, that the Adair County Clerk file copies of the meeting minutes of the Adair County Fiscal Court appointing a commissioner to the Adair County District on December 9, 2014, and appointing the prior commissioner whose term allegedly expired on August 1, 2014.

If the Commission finds that a vacancy did exist for more than 90 days, we will then proceed to identify qualified candidates for appointment to that position. To ensure that a wide range of candidates are considered, the Commission will permit all

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<sup>1</sup> 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) at 4-5.

interested persons the opportunity to nominate candidates for the position and will then determine whether each of these candidates meets the constitutional and statutory requirements for the office of water district commissioner and, of those candidates that meet these requirements, which is best suited to sit on the Board of Commissioners. The Commission also will direct that a copy of this Order be served upon the Adair County Judge/Executive, the Adair County Fiscal Court, the Adair County Attorney, and Adair County District's Board of Commissioners to notify them of this proceeding.

IT IS THEREFORE ORDERED that:

1. This proceeding is initiated to determine whether a vacancy existed on the Adair County District's Board of Commissioners for more than 90 days in 2014.
2. Adair County District is made a party to this proceeding.
3. Any party filing documents with the Commission shall serve a copy of those documents upon all other parties.
4.
  - a. The information requested in the Appendix to this Order is due within 14 days of this Order. 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 the original and five 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 the 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.

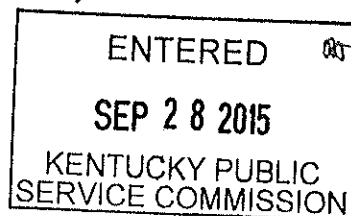
d. For any request to which a party refuses to furnish all or part of the requested information that party shall provide a written explanation of the specific grounds for its failure to completely and precisely respond.

e. A party filing a document containing personal information shall, in accordance with 807 KAR 5:001, Section 4(10), encrypt or redact the document so that personal information cannot be read.

6. Service of all documents shall be made in accordance with 807 KAR 5:001, Section 4(8).

7. The Executive Director shall serve a copy of this Order upon the Adair County Judge/Executive, the members of the Adair County Fiscal Court, the Adair County Attorney, and the Adair County District's Board of Commissioners.

By the Commission



ATTEST:

  
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Executive Director

## APPENDIX

### APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE COMMISSION IN CASE NO. 2015-00305 DATED **SEP 28 2015**

1. List the name of each current Adair County District commissioner and the date on which his or her term expires.
2. Provide a map of Adair District's territory.
3. Provide the ordinances and resolutions of Adair County Fiscal Court that establish Adair County District's territorial boundaries.
4. Provide all orders of the Adair County Judge/Executive that address the recent appointment to the Adair County District's Board of Commissioners made on December 9, 2014.
5. Provide all correspondence with the Adair County Judge/Executive regarding the appointment to the Adair County District Board of Commissioners made on December 9, 2014.
6. Provide the name of the commissioner who preceded the December 9, 2014 appointment as well as the date upon which that individual's term on the Board of Commissioners expired.
7. Provide all correspondence with the Adair County Judge/Executive regarding the expiration of the term of the individual preceding whose term allegedly expired on August '1, 2014.

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