

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

Reed Kline,)	
)	
Complainant,)	
)	
v.)	Case No. WC-2006-0106
)	
Missouri-American Water Company,)	
)	
Respondent.)	

MAWC’S MOTION TO DISMISS

COMES NOW Missouri-American Water Company (MAWC or Company), by and through its counsel, and, respectfully states the following to the Missouri Public Service Commission (Commission) as its motion to dismiss the Complaint filed by Reed Kline (Mr. Kline or Complainant):

1. The Complainant indicates that he is a developer in St. Joseph, Missouri, and that he has concerns as to MAWC’s policy regarding the placement of water lines within new subdivisions and its interaction with the City of St. Joseph’s right-of-way management ordinance. Mr. Kline further states that his own development was platted prior to June 20, 2005, the date St. Joseph passed revisions to its right-of-way management ordinance and, therefore, the recent revisions to the St. Joseph ordinance are not applicable to his development and his development is being provided water service.

2. Mr. Kline states that “although MAWC has since agreed to proceed with providing service in these previously-platted developments, [he is] concerned about what *might happen in the future . . .*” Complaint, p. 1 (emphasis added). He later states again that his “concern is with what *might happen in the future.*” Complaint, p. 3 (emphasis added). Mr. Kline’s specific request for relief is that the Commission “provide an official ruling with regard to whether or not MAWC has the right to refuse to provide service based upon MAWC’s new policy” *Id.* He does not allege that he has been refused service.

3. MAWC moves the Commission to dismiss this Complaint. Mr. Kline indicates that his development will receive service and he has no dispute with the Company at this time. He states twice that he is concerned about what “might happen in the future.” For these reasons, Mr. Kline’s asks the Commission to issue an order that is in the nature of declaratory relief and that would be unauthorized under Missouri law. *State Tax Commission v. Administrative Hearing Commission*, 641 S.W.2d 69, 76 (Mo. banc 1982)

4. Mo. Const. Art. V, Sec. 1 states that “[t]he judicial power of the state shall be vested in a supreme court, a court of appeals consisting of districts as prescribed by law, and circuit courts.” The courts have said that not even the state legislature can “turn an administrative agency into a court by granting it power that has been constitutionally reserved to the judiciary.” *State Tax Comm’n.* at p. 76. Certainly, then, the Commission cannot assume this role on its own.

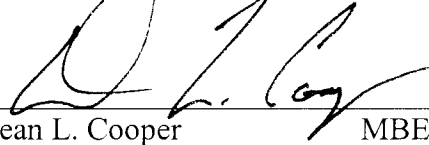
5. Mr. Kline has asked the Commission to declare the parties’ rights with regard to facts that do not exist at this time. The Commission, as an administrative agency, may exercise only those powers conferred on it by statute, and the Commission’s statutes contain no provision authorizing it to issue what amounts to declaratory relief. *See Barber v. Jackson County Ethics Comm’n.*, 935 S.W.2d 62, 67 (Mo. App. W.D. 1996). Furthermore, even if the statutes did purport to provide such authority, it would be invalid. *See State Tax Comm’n.*¹.

6. Commission Rule 4 CSR 240-2.070(6) states, in part, that the Commission, “on its own motion or on the motion of a party, may after notice dismiss a complaint for failure to state a claim upon which relief may be granted.” In view of the above, the Commission must dismiss this Complaint because it has no jurisdiction to engage in review of the future concerns set forth in the Complaint and has no ability to provide the relief requested by Mr. Kline.

¹*See also Lederer v. State Dept. of Social Services*, 825 S.W.2d 858, 863 (Mo. App. W.D. 1996), which holds that administrative bodies, even those such as the Administrative Hearing Commission which are vested with broad fact-finding functions, “cannot be a court in the constitutional sense” and cannot be given powers which the constitution reserves to the judiciary. To do so would violate the constitutional principle of separation of powers. *Id.*

WHEREFORE, MAWC prays the Commission dismiss the Complaint and enter such other orders and relief as the Commission deems reasonable and just.

Respectfully submitted,



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ATTORNEYS FOR MISSOURI-AMERICAN
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail or by U.S. Mail, postage prepaid, on October 3, 2005, to the following:

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