



John B. Coffman

Acting Public Counsel

State of Missouri

Bob Holden

Governor

Office of the Public Counsel
Governor Office Building
200 Madison, Suite 650
P.O. Box 7800
Jefferson City, Missouri 65102

Telephone: 573-751-4857
Facsimile: 573-751-5562
Web: <http://www.mo-opc.org>
Relay Missouri
1-800-735-2966 TDD
1-800-735-2466 Voice

March 22, 2002

Mr. Dale H. Roberts
Secretary/Chief Regulatory Law Judge
Public Service Commission
P. O. Box 360
Jefferson City, MO 65102

FILED

MAR 22 2002

**Missouri Public
Service Commission**

Re: **Case No. WC-2002-146**

Dear Mr. Roberts:

Enclosed for filing in the above-referenced case please find the original and eight copies of **Notice of Intent Not to File Brief and Filing of Proposed Findings of Fact and Conclusions of Law by the Office of the Public Counsel**. Please "file" stamp the extra-enclosed copy and return it to this office.

Thank you for your attention to this matter.

Sincerely,

M. Ruth O'Neill
Assistant Public Counsel

MRO:jb

cc: **Counsel of Record**

BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI

FILED

MAR 22 2002

Missouri Public
Service Commission

Staff of the Missouri Public Service Commission,)
Complainant,)
vs.)
St. Louis County Water Company,)
d/b/a Missouri-American Water Company,)
Respondent.)

Case No. WC-2002-146

**NOTICE OF INTENT NOT TO FILE BRIEF AND FILING OF
PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW
BY THE OFFICE OF THE PUBLIC COUNSEL**

COMES NOW, the Office of the Public Counsel, and respectfully informs the Missouri Public Service Commission that it does not intend to file a brief in this matter. However, based upon a review of the evidence presented in this case, Public Counsel hereby submits, for the Commission's consideration, the following Proposed Findings of Fact and Conclusions of Law.

Findings of Fact

1. In 1999, the Missouri legislature enacted Section 66.405 RSMo, providing authority for "counties of the first classification having a population of over nine hundred thousand inhabitants" to submit a ballot proposal to its inhabitants for an ordinance which would allow the county to

"levy and impose annually, upon water service lines providing water service to residential property having four or fewer dwelling units, on a countywide basis, including both the incorporated and unincorporated

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areas of such county, a fee not to exceed one dollar per month or an equivalent rate collected at some other interval."

2. The County of St. Louis (County) submitted such a proposal to its voters, and the voters approved the proposal. Subsequent to voter approval, the County enacted an ordinance which was designated as § 502.195 SLCRO (hereinafter "Ordinance"), and which reads in pertinent part as follows:

502.195 Water Service Line Repair Fee. – A fee of One Dollar (\$1.00) per month is imposed upon all water service lines providing water service within the county to residential property having four or fewer dwelling units, to provide funds to pay for repair or replacement commencing July 1, 2001, of water lines extending from the water main to a residential dwelling due to failure of the line or for road relocation.

3. The County then entered into a written agreement with the Company, which provides in pertinent part, that:

"1. Beginning on March 1, 2001, [Company] shall add to the bill of each residential customer having four or fewer dwelling units a separate and clearly described fee to be paid in advance, of one dollar (\$1.00) per month or three dollars (\$3.00) per quarter (and not pro-rata for periods of time less than one month, or quarter whichever is applicable) during which service is provided, which such amount may be billed and collected monthly, quarterly or otherwise in the due course of [Company's] usual and ordinary billing practices."

The agreement between the Company and the County further provided that

"7. The parties hereto understand and agree that this Contract does not seek to invade, bypass or supersede the jurisdiction of the Missouri Public Service Commission, and accordingly this Contract shall be submitted to the Missouri Public Service commission for its information, and if deemed necessary by such Commission, for its approval. This Contract shall at all times be subject to the actions of such Commission."

4. In January of 2001, the Company filed a tariff with the Commission which, once effective, would allow the Company to collect the fee for water service lines in a manner consistent with the ordinance and the agreement between the Company and the County. That tariff was not suspended is currently in effect.

5. The Staff of the Missouri Public Service Commission instituted a complaint against the Company, alleging that while the statute authorized the County to enact an ordinance, and contract with the Company to charge this fee upon water service lines, that the fee must be collected from the owners of the property served by the service lines rather than the company's customer in those situations in which the water customer was not the owner of the property.

6. In testimony filed with the Commission, Senator Wayne Goode, a proponent of the original legislation which became § 66.405 RSMo, described the legislative intent of the statute. Senator Goode testified that "The assumption from the beginning was that the funding for the water lateral repair and replacement program would come from the customer/ratepayer utilizing a service fee, which would appear as a separate item on the water bill." (Rebuttal Testimony of Senator Wayne Goode, at p. 2.) Senator Goode further testified that, in the legislative process "there was never any discussion other than the costs being borne by the customer/ratepayer.... The issue of billing the actual real estate owner directly was never raised." (Id., at p. 3.) The evidence establishes that the legislature intended that the bill would apply to customers, whether or not the customer was the owner of the real estate serviced by the service line.

7. Senator Goode further testified that the purpose of the statute was to "relieve water customers/ratepayers from bearing the cost of water lateral failures." He further

testified that the legislation was necessary to address a problem fairly unique to St. Louis County, in that, unlike in most areas of the state, the "water company only owns the mains and not the laterals." (Id., at p. 5). We find that the record contains evidence of the intended benefit of the statute.

8. All parties agree that that the Company's customers benefit from the service line maintenance program, as do owners of the property. The parties also agree that billing all applicable residential customers is the most efficient and cost-effective manner in which to assess the charge. The parties all recognize that there are many difficulties inherent in determining and accurately tracking the legal ownership of residential real estate. The evidence establishes that billing water company customers is the most efficient and cost-effective manner of collecting the fee imposed by the County.

Conclusions of Law

1. This Complaint has been filed pursuant to § 393.140 RSMo 2001. The burden of proof is upon the Complainant as required by § 386.430 RSMo.

2. The issue of whether the tariff complies with the statute is a question of statutory interpretation. Under Missouri law, the Commission must first determine whether the meaning of the statute is plain from the statutory language. The rule of statutory construction was recently explained in the case of Lincoln County Stone Co. v. Koenig, 21 S.W.3d 142, 146 (Mo. App. E.D. 2000). In that case, the Court stated that the purpose of:

"statutory construction is to ascertain the intent of the legislature. State ex rel. Whiteco v. Bowers, 965 S.W.2d 203, 207 (Mo. App. 1998). To discover the legislature's intent, we must examine the words used in the statute, the context in which the words are used, and the problem the

legislature sought to address with the statute's enactment. Id. We must construe the statute in light of the purposes the legislature intended to accomplish and the evils it intended to cure. Id. A statute must not be interpreted narrowly if such an interpretation would defeat the purpose of the statute. Id. It is presumed the legislature intended that every word, clause, sentence and provision of a statute have effect; conversely, it will be presumed the legislature did not insert idle verbiage or superfluous language in a statute. Hyde Park Housing Partnership v. Director of Revenue, 850 S.W.2d 82, 84 (Mo. App. 1995)."

Applying this rule of statutory construction, the Commission finds that the plain language of the statute is fairly clear. However, it recognizes that the description of the affected property which states "four or fewer dwelling units" creates a potential ambiguity. Therefore, the Commission will go further in construing the statute.

3. The Commission finds that the statute in question, by allowing certain counties to levy a fee on "water service lines providing water service to residential property having four or fewer dwelling units" did not specifically state that the fee was to be paid by the owners of the property. Therefore, the plain language of the statute does not support the Staff's interpretation. Further, the statute must be construed in light of the purpose of the statute. We find that the purpose of the statute was to provide a benefit to the water company customers who would otherwise face high charges for repairing water mains.


4. The Commission finds that the Staff asks us to interpret the statute too narrowly. The practical effect of a ruling supporting the Staff's interpretation would be to require the Company to determine the identity and address of each property owner of property which receives service, and bill those owners for the fee imposed by the County. While in many instances, the property owner and the customer may be the same, in some instances, property owners will be not customers of the water company, and may not be

residents of the State of Missouri. In such cases, the Company has no authority from this Commission to send bills to those property owners. Certainly, there is no recourse to the Company if those non-customer owners refuse to pay the fee. Under the Staff's interpretation of the statute, the purpose of the statute would be defeated. For this reason, we conclude that the statute does not require that the property owners pay the fee at issue in this case.

5. Applying the statute, as we have construed it, to the issue in the complaint in this case, it is clear that the Staff has failed to establish that the Company may lawfully impose the fee on all of its customers, pursuant to its agreement with the County and the filed tariff. Therefore, the complaint will be dismissed.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

By: 
M. Ruth O'Neill (#49456)
Assistant Public Counsel

P O Box 7800
Jefferson City, MO 65102
(573) 751-1304
(573) 751-5562 FAX
roneill1@mail.state.mo.us

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed or hand-delivered to the following this 22nd day of March 2002:

KEITH R KRUEGER

General Counsel
Missouri Public Service Commission
P O Box 360
Jefferson City, MO 65102
kkrueg01@mail.state.mo.us
Attorney for the Staff of the
Missouri Public Service Commission

BRENT C CANTOR/ROBERT GRANT

St Louis County Missouri
41 South Central
Clayton MO 63105
Brent_Cantor@stlouisco.com
Attorneys for St Louis County MO

RICHARD T CIOTTONE

St Louis County Water Company
d/b/a Missouri-American Water Company
949 E Essex
St Louis MO 63122
rtciottone@msn.com
Attorney for St Louis County Water Co.
d/b/a Missouri-American Water Co.

DAVID ABERNATHY

St Louis County Water Company
d/b/a Missouri-American Water Company
535 North Ballas Road
St Louis MO 63141
dabernathy@mawc.com
Vice President & Corporate Counsel
St Louis County Water Company
d/b/a Missouri-American Water Company