

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

Staff of the	)	
Missouri Public Service Commission,	)	
	)	
Complainant,	)	
	)	
vs.	)	<b><u>File No. WC-2014-0018</u></b>
	)	
Consolidated Public Water Supply District,	)	
C-1 of Jefferson County, Missouri,	)	
	)	
and	)	
	)	
City of Pevely, Missouri,	)	
	)	
Respondents.	)	

**REPLY BRIEF OF RESPONDENT CONSOLIDATED PUBLIC  
WATER SUPPLY DISTRICT, C-1 OF JEFFERSON COUNTY, MISSOURI**

COMES NOW Respondent Consolidated Public Water Supply District, C-1 of Jefferson County, Missouri (hereinafter referred to as “C-1”) and for its Reply Brief pursuant to 4 CSR 240-2.140 states to the Missouri Public Service Commission as follows:

Staff’s arguments in their Issue 1 and 2 fail as, even if the agreement of the Respondents is a territorial agreement as contemplated by the §247.172 RSMo, the Commission does not have authority to require the Respondents to file the agreement or to assess penalties against Respondents as said agreement as a matter of law is void under the provisions of §432.070 RSMo.

Section 432.070 RSMo (2013) provides “No county, city, town, village, school township, school district, or other municipal corporation shall make any contract, **unless** the same shall be within the scope of its powers or **be expressly authorized by law...**” The courts have held that the provisions of section 432.070 RSMo are mandatory and that if the contract is not within the

scope of the entity's powers or authorized by law the contract is void and unenforceable. State ex rel Taylor v. Reorganized School Dist., 257 S.W. 2d 262 (Mo. App. E.D. 1953); Software A.G. of North America, Inc. v. The City of Columbia, Missouri, 903 S.W.2d 641, 642 (Mo. App. W.D. 1995); Homebuilders Ass'n of Greater Kansas City v. Kansas City, 431 S.W.2d 111, 113 (Mo. banc 1968) (Contracts entered into beyond scope of authority of city are void). If §247.172 RSMo is applicable to the agreement of Respondents then because the agreement was not submitted for approval, it is not authorized by law and is therefore void and unenforceable.

“The purpose of [§432.070 RSMo] is to protect the governmental entity upon which another seeks to impose or enforce some claimed contractual obligation or agreement...It is not for the protection of the person seeking to impose the contractual agreement upon the governmental entity.” Public Water Supply District No. 16 v. City of Buckner, 44 S.W.3d 860, 864 (Mo. App. W.D. 2001). When reading §247.172 RSMo in conjunction with the provisions of §432.070 RSMo and the caselaw thereunder, it is clear the legislature only granted the Public Service Commission authority over those territorial agreements that were approved via application and hearing because any agreement entered into by a municipality or a public water supply district that was not presented for approval would be void and unenforceable. Further, as it is void, there is no need to present it to the Commission in order to revoke same. Under the provisions of §432.070 RSMo, the Respondents cannot be forced to present said agreement to the Commission.

Further, because it is a void and unenforceable agreement if §247.172 RSMo applies to the agreement, the Commission does not have the authority to seek penalties for any acts of the Respondents in conformance with the agreement as the Commission cannot under §432.070 RSMo seek to impose the agreement on the Respondents. “The fact a municipality has received the benefit of a performance by the other party does not make the municipality liable either on the

theory of a ratification, estoppel or implied contract." Allen v. City of Fredericktown, 591 S.W.2d 723, 725 (quoting Mo. Int'l Investigators, Inc. v. City of Pacific, 545 S.W.2d 684 (Mo. App. 1976); Kansas City v. Rathford, 353 Mo. 1130, 186 S.W.2d 570, 574 (Mo. 1945)). Under section 432.070, "it is as much ultra vires for a Missouri municipally to incur a liability in the nature of a contractual obligation in the absence of a writing as to incur a liability not within the scope of its corporate powers or one not expressly authorized by law." Donovan v. Kansas City, 175 S.W.2d 874, 882 (Mo banc 1943). *See also* Duckett Creek Sewer Dist. V. Golden Triangle Dev. Corp., 32 S.W.3d 178 (Mo. App. E.D. 2000).

Staff expresses concern for the Valle Creek Development and its continued service as a basis for finding in favor of the Complaint. However, the effect on Valle Creek is irrelevant for the purposes of what is before the Commission. If the Commission finds that the law required the agreement of the Respondents to have been filed before becoming effective, then pursuant to §432.070 RSMo, the agreement is void and unenforceable. It is not a violation of law, it is merely an ineffective and unenforceable agreement. The position of Valle Creek would then be no different than it was prior to 2007. It lies within the corporate boundaries of both Respondents and in an area which has not been detached from the corporate boundary of Respondent C-1 in accordance with §247.160 or §247.170 RSMo. If the owners of Valle Creek wish to be solely within the corporate boundary of, and thereby served by, Pevely, the owners of Valle Creek then have the authority under §247.031 RSMo to request deannexation from C-1. *See* Public Water Supply District No. 5 of Jefferson County, Missouri v. City of DeSoto, Missouri, 8 S.W.3d 206 (Mo. App. 1999). It would not be a matter that would come before the Commission for determination. It is a matter that would go before the circuit court. The owners of Valle Creek are not without legal remedies for their alleged plight.

Finally, Respondent C-1 incorporates by reference the arguments made by Respondent Pevely in its post hearing reply brief.

WHEREFORE Respondent C-1 prays the Missouri Public Service Commission dismiss this action and for such other and further orders as are just under the circumstances.

Respectfully submitted,

/s/ Bianca L. Eden

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing was mailed by U.S. Mail on this 6<sup>th</sup> day of August, 2014, unless served electronically via EFIS to:

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*/s/ Bianca L. Eden*\_\_\_\_\_