

**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.	)	

**INITIAL POST HEARING 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 Post Hearing Brief pursuant to 4 CSR 240-2.140 states to the Missouri Public Service Commission as follows:

The complaint herein is based on the allegation that section 247.172 RSMo grants the Public Service Commission jurisdiction of an agreement which the Respondents entitled Territorial Agreement and entered into in 2007. The Public Service Commission only has the power granted to it by the Legislature and may only act in a manner directed by the Legislature or otherwise authorized by necessary or reasonable implication and has no authority to interpret a statute in such a way that is contrary to the plain terms of the statute. James Evans, et al. v. Empire District Electric Company, 346 S.W.2d 313, 318 (Mo. App. W. D. 2011) and State ex rel Mogas Pipeline, LLC v. Missouri Public Service Commission, 366 S.W.3d 493, 496 (Mo. 2012). The Public Service Commission “is a creature of statute and can only function in accordance with it

enabling statutes.” Id. “If a power is not granted to the PSC by Missouri statute, then the PSC does not have that power.” Id.

The general jurisdiction granted to the Public Service Commission is set forth in Section 386.250 RSMo (2013) which specifically provides that the Public Service Commission has no jurisdiction “over the service or rates of any municipally owned water plant or system in any city of this state except where such service or rates are for water to be furnished or used beyond the corporate limits of such municipality.” Section 247.172 RSMo gives the Public Service Commission limited and specific jurisdiction over municipalities and public water supply districts regarding territorial agreements entered into “between and among public water supply districts, water corporations subject to public service commission jurisdiction, and municipally owned utilities” and which displace competition.

For a territorial agreement to fall under the provisions of section 247.172 RSMo, it must displace competition. As between a public water supply district and a municipality, the Missouri Courts have held that the “legislature did not intend that both [a municipality] and a [public] water district distribute water in the same area at the same time.” Camden County Public Water Supply District #4, et al. v. Village of Sunset Beach, City of Lake Ozark, et al., 281 S.W.3d 893, 901 (Mo. App. S.D. 2009) quoting Mathison v. Pub. Water Supply Dist. No. 2 of Jackson County, 401 S.W.2d 424, 431 (Mo. 1966). The court’s rationale was that if the legislature intended competition between these two governmental entities, “the legislature would not have...provided a method (*[section] 247.170*, [Cum. Supp. 2003,]) whereby [a municipality] could, as it grew, acquire the assets of a [public water] district lying within an area annexed by the [municipality], without the consent or agreement of the [public water] district.” Id. Missouri Courts have further stated that prior to a city servicing areas that the city has annexed that also

are within the boundaries of a public water supply district, “the city was obligated to comply with the procedures for acquiring the right to service such area as set out in §247.170.” City of Harrisonville, Missouri v. Public Water Supply District No. 9 of Cass County, Missouri, 49 S.W.3d 225, 234 (Mo. App. W.D. 2001) quoting Public Water Supply District No. 10 of Cass County v. City of Peculiar, 971 S.W.2d 849, 850 (Mo. App. W.D. 1998). As such, when providing service within their respective boundaries, Respondents are not in competition with each other.

As the legislature did not intend competition between the Respondents in the areas where their boundaries overlapped, the only time that Respondents could be in competition with each other is if they are providing service outside of their corporate boundaries. Each entity has the power to sell water to customers outside of their corporate boundaries. *See §247.050(15) RSMo and §91.100 RSMo*. It is in the situation of service outside of one of their corporate boundaries that an agreement between Respondents would displace competition.

The agreement in question though did not attempt to address territory to which the legislature intended that the entities be able to compete. Respondents’ Agreement only dealt with areas where the boundaries of each Respondent overlapped. There is no dispute that the territories set forth in the agreement, specifically the subdivisions, Tiara at the Abbey, Hunters Glen and Vinyards at Bushberg, and the Valle Creek Condominium development are within the city limits of Respondent Pevly and the territorial boundary of Respondent C-1. It is clear from paragraphs 3 and 6 of the Agreement that the Respondents intended the Agreement to apply only to those areas to which the boundary currently overlapped or might in the future overlap. (Ex pgs 58-59).

As the Agreement of Respondents does not displace competition as contemplated by the legislature, section 247.172 RSMo does not apply and the Public Service Commission does not have jurisdiction of same. The post Agreement “competitive” acts and alleged violations of the Agreement asserted by Respondent C-1 against Respondent Pevely do not change the court’s interpretations of the law that the legislature did not intend for municipalities and public water supply districts to compete when providing service within their respective boundaries. It is only when a territorial agreement displaces competition that jurisdiction over the territorial agreement is placed with the Public Service Commission.

Even if Respondents’ Agreement did displace competition, Section 247.172 RSMo additionally only applies to territorial agreements entered “**as between and among** public water supply districts, water corporations subject to Public Service Commission jurisdiction, **and** municipally owned utilities.” (Emphasis added). No water corporation subject to Public Service Commission jurisdiction is a party to the agreement in question. The phrasing of the statute requires all three entities to be parties to a territorial agreement in order to trigger Public Service Commission jurisdiction. Had the legislature intended otherwise the conjunction “or” would have been used. “The primary rule of statutory interpretation is to give effect to the legislative intent as reflected in the plain language of the statute...we enforce statutes as written, not as they might have been written.” Hogan v. Board of Police Commissioners of Kansas City, 337 S.W.3d 124, 131 (Mo. App. W.D. 2011).

The plain language of section 247.172.7 RSMo (2013) provides “The commission shall have jurisdiction to entertain and hear complaints involving any **commission-approved territorial agreement**.” By the plain language of the statute, the only complaints that can be heard by the Commission are complaints regarding territorial agreements which have previously

been presented to the Commission and have received approval of the Commission by report and order. Section 247.172.4 and .7 RSMo (2013). “A presumption exists that the legislature does not insert idle verbiage or superfluous language in the statute. Cook v. Newman, 142 S.W.3d 880, 892 (Mo. App. W.D. 2004). Rather, we presume that the legislature intends that every word, clause, sentence, and provision of a statute have effect. Id.” State ex rel Vincent v. D.C., Inc., 265 S.W.3d 303, 308 (Mo. App. E.D. 2008). If the Commission had jurisdiction to hear the complaint pursuant to § 386.390 RSMo, the language of §247.172.7 stating “the commission shall have jurisdiction to entertain and hear complaints involving any commission-approved territorial agreement” would be superfluous and of no effect.

After entering the agreement in 2007, C-1 and Pevely did not apply to receive approval of the Commission as these entities did not believe the agreement fell under the provisions of section 247.172 RSMo. Pursuant to the terms of section 247.172 RSMo, if a territorial agreement subject to the statute is not presented, it is not effective until presented. Nothing within the plain language of the statute gives the Public Service Commission jurisdiction to bring a complaint over an agreement that has not been presented or approved. Under a plain reading of the statute, the Respondent only has jurisdiction to hear complaints over territorial agreements as between and among public water supply districts, water corporations subject to Public Service Commission jurisdiction, and municipally owned utilities which, after an evidentiary hearing, Public Service Commission has approved by report and order. Section 247.172.4 RSMo. Section 247.172.7 further provides, “nothing in this section shall be construed as otherwise conferring upon the commission jurisdiction over the service, rates, financing, accounting, or management of any public water supply district or municipally owned utility, or to amend, modify, or otherwise limit the rights of public water supply districts to provide service as otherwise provided by law.” As

such the Commission has no jurisdiction unless the steps delineated under the statute have been taken.

Further, if the Agreement was required by law to be brought before the Commission to be effective and was not, the Agreement then is not in conformance with the law and pursuant to the Missouri statutes governing contracts of municipalities and public water supply districts is void and therefore unenforceable. Section 247.080.5 RSMo (2013) provides that “all contracts made by the district shall conform to law governing contracts of other municipal corporations.” 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.

In State ex rel Taylor v. Reorganized School Dist., 257 S.W. 2d 262 (Mo. App. E.D. 1953) a release of portions of a school district for annexation into another school district was challenged in part on the basis that the annexing district’s pre-release and annexation bargaining precluded the district from later annexing the property and was instead a rejection of the territory. The court held that any conditional acceptance alleged was not within the powers of the district and therefore a nullity. Id at 268. In Software A.G. of North America, Inc. v. The City of Columbia, Missouri, a software company sued the city for breach of an annual technical services contract which required in-advance payment for service for the year. When the city did not give a written notice of its intent to cancel the contract until seven months into the contract year and the city refused to tender the amount claimed due, the software company sued. 903 S.W.2d 641, 642 (Mo. App. W.D. 1995). The court found that contract was void and unenforceable because the contract

exceeded five years without any public rebidding in violation of the ordinances of the City of Columbia. Id. At 644. *See also 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).

“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, because jurisdiction does not fall to the Commission for an unapproved agreement, the Commission lacks the authority to seek penalties as to an agreement which is void and unenforceable.

Respondent C-1 further incorporates the facts and arguments set forth in the Post Hearing Brief of Respondent City of Pevely as if fully set forth herein. Respondent C-1 further incorporates that arguments set forth in its previously filed Memorandum in Support of Respondent's Motion to Dismiss and Answer and Memorandum in Opposition to the Motion for Summary Determination and Response To Complainant's Reply To Respondents' Denominated Affirmative Defenses as if fully set forth.

The Complaint herein must be dismissed as (1) Respondents' Agreement does not displace competition between and among municipally owned utilities, water corporations subject

to Commission jurisdiction and public water supply districts and (2) even if the Agreement is one to which §247.172 RSMo is applicable, pursuant to §432.070 RSMo, the Agreement is void and unenforceable and, by the terms of §247.172.7 RSMo, is not under the jurisdiction of the Commission.

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 23rd day of July, 2014, unless served electronically via EFIS to:

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