

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

In the Matter of the Joint Application of)	
Stoddard County Sewer Company, Inc., R.D.)	
Sewer Co., L.L.C. and the Staff of the)	
Missouri Public Service Commission for an)	<u>Case No. SO-2008-0289</u>
Order Authorizing Stoddard County Sewer Co.,)	
Inc. to Transfer its Assets to R.D. Sewer Co.,)	
L.L.C., and for an Interim Rate Increase.)	

**OFFICE OF THE PUBLIC COUNSEL’S MOTION TO DISMISS
FOR LACK OF JURISDICTION**

COMES NOW the Office of the Public Counsel (Public Counsel) and for its Motion to Dismiss for Lack of Jurisdiction states as follows:

1. This case was brought by Stoddard County Sewer Company, Inc. (Stoddard County), R.D. Sewer Co., L.L.C. (R.D. Sewer) and the Staff of the Missouri Public Service Commission (Staff) (collectively the Joint Applicants).

2. In the Joint Application of Stoddard County Sewer Company, Inc., R.D. Sewer Co., L.L.C. and the Staff For an Order Authorizing Stoddard County Sewer Co. to Transfer its Assets to R.D. Sewer Co. and Establishing New Rates for R.D. Sewer Co., Subject to Review (Joint Application), the Joint Applicants stated:

24. At the time of his death, Mr. Bien owned all of the stock of Stoddard County, in his own name alone. Nearly one year later, on February 28, 2001, the Circuit Court of Stoddard County appointed Public Administrator Brenda Wilson as the personal representative of Mr. Bien’s estate. On June 7, 2002, the court approved the final settlement of the estate and ordered that all stock of Stoddard County be distributed to Ruth Bien, the widow of Mr. Bien. On June 11, 2002, Ms. Wilson assigned all of Mr. Bien’s interest in Stoddard County to Ruth Bien, who acknowledged receipt thereof of June 11 or 12, 2002.¹ Also on June 11 or 12,

¹ [Footnote 2] The text of the receipt that Mrs. Bien signed states that she received the assignment on June 11, 2002. However, the acknowledgement of her signature on the receipt is dated June 12, 2002.

2002, Ruth Bien assigned all of her interest in Stoddard County to R.D. Sewer, one of the Applicants herein.²

3. The Joint Application also states:

40. Section 393.190 provides that no sewer corporation may transfer any assets without having first obtained the consent of the Commission to do so. Any transfer that does not comply with this requirement is void. ***This statute does not, however, require Commission approval of the transfer of stock of a regulated sewer corporation. None of the transactions described in Paragraph [24] of this Joint Application violates any of the terms of §393.190.*** (Emphasis added.)

4. It was just recently brought to Public Counsel's attention that a closer reading of Section 393.190 RSMo. 2000 reveals that §393.190.2 does have a requirement for Missouri Public Service Commission (Commission) approval of the transfer of stock:

... Save where stock shall be transferred or held for the purpose of collateral security, ***no stock corporation of any description, domestic or foreign, other than a gas corporation, electrical corporation, water corporation, sewer corporation or street railroad corporation, shall, without the consent of the commission, purchase or acquire, take or hold, more than ten percent of the total capital stock issued by any gas corporation, electrical corporation, water corporation or sewer corporation organized or existing under or by virtue of the laws of this state, except that a corporation now lawfully holding a majority of the capital stock of any gas corporation, electrical corporation, water corporation or sewer corporation may, with the consent of the commission,*** acquire and hold the remainder of the capital stock of such gas corporation, water corporation or sewer corporation, or any portion thereof. (Emphasis added.)

5. Section 393.190.3 RSMo. 2000 continues by saying:

... ***Every contract, assignment, transfer or agreement for transfer of any stock by or through any person or corporation to any corporation in violation of any provision in this chapter shall be void and of no effect,*** and no such transfer or assignment shall be made upon the books of any such gas corporation, electrical corporation, water corporation or sewer corporation or shall be recognized as effective for any purpose. (Emphasis added.)

6. Section 386.020 defines a "sewer corporation" as follows:

(48) **"Sewer corporation"** includes every corporation, company, association, joint stock company or association, partnership or person, their lessees, trustees or

² [Footnote 3] The text of the assignment that Mrs. Bien signed states that she assigned her interest to R.D. Sewer Co. on June 11, 2002. However, the acknowledgement of her signature on the assignment is dated June 12, 2002.

receivers appointed by any court, owning, operating, controlling or managing any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain, except that the term shall not include sewer systems with fewer than twenty-five outlets;

7. R.D. Sewer is a Missouri limited liability corporation which was established on June 7, 2002 in preparation for the transfer of the Stoddard County stock.³ The transfer of stock from Mrs. Bien to R.D. Sewer took place just four or five days later.

8. At the time of the transfer, R.D. Sewer did not meet the definition of a “sewer corporation” in that it did not own, operate, control or manage any sewer system, plant or property, for the collection, carriage, treatment, or disposal of sewage anywhere within the state for gain. R.D. Sewer also had no certificate of convenience and necessity from the Commission to operate as a sewer corporation.

9. As Mrs. Bien’s transfer of all of the stock of Stoddard County was not to a “sewer corporation,” Commission approval was required per §393.190.2.

10. Commission approval was not received for the transfer of all of the stock of Stoddard County from Ms. Bien to R.D. Sewer. Therefore, the transfer was in violation of §393.190.2 and is void per §393.190.3.

11. Legally, Mrs. Bien is the owner of the stock in Stoddard County and as such, she is a necessary party in any application regarding the transfer of Stoddard County’s assets. However, Mrs. Bien is not a party to this case.

12. R.D. Sewer is not a “sewer corporation” and does not have a certificate of convenience and necessity to operate as a sewer corporation. Any purported of transfer of ownership of the stock of Stoddard County in 2002 is void per §393.190.3.

³ See Joint Application, Attachment B.

13. The Commission has no jurisdiction to approve the transfer of assets of Stoddard County without the presence of the owner of the Stoddard County stock. Therefore, the Commission has no jurisdiction to hear this case or to approve the transfer of the assets of Stoddard County to R.D. Sewer.

WHEREFORE, Public Counsel respectfully requests that the Commission grant its motion to dismiss this case.

Respectfully submitted,

OFFICE OF THE PUBLIC COUNSEL

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to the following this 11th day of August 2008:

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