

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

The Staff of the Missouri Public Service  
Commission,

Complainant,

v.

Smithview H2O Company  
John Kuhle  
820 E. County Line,  
Clark, MO 65243,

John Kuhle,  
802 E. County Line,  
Clark, MO 65243

and

Kuhle H2O LLC  
John Kuhle  
802 E. County Line,  
Clark, MO 65243,

Respondents.

**Case No. WC-2016-**

**COMPLAINT**

**COMES NOW** the Staff of the Missouri Public Service Commission, through the undersigned counsel, and pursuant to Section 386.390 RSMo (2000)<sup>1</sup> and 4 CSR 240-2.070(1), files this Complaint with the Missouri Public Service Commission against Respondents, Smithview H2O Company, John Kuhle, and Kuhle H2O LLC, for violation of the Commission's statutes and rules relating to the filing of annual reports, payment of annual assessments, provision of safe and adequate

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<sup>1</sup> All statutory references are to RSMo 2000, as currently supplemented.

services, and provision of unauthorized services. In support of its Complaint, Staff respectfully states the following:

### **Introduction**

1. This matter concerns Respondents failure to timely file an annual report as required by Section 393.140(6), RSMo and Commission Rule 4 CSR 240-3.640; failure to pay its annual Public Service Commission Assessment, failure to provide safe and adequate service, and provision of utility services without authorization.

### **Parties**

2. Complainant is the Staff of the Missouri Public Service Commission, acting through the Staff Counsel's Office as authorized by Commission Rule 4 CSR 240-2.070(1).

3. Respondent Smithview H2O Company is a Missouri corporation not in good standing. Respondent's official representative, as listed in EFIS, is John Kuhle, 820 E. County Line, Clark, Missouri 65243. Respondent's registered agent, as listed on the Secretary of State's website, is Robert Smith, 7491 Highway VV, Columbia, Missouri 65202. This Commission granted Respondent a Certificate of Convenience and Necessity ("CCN") authorizing the Company to provide water service to the public for gain on April 12, 1973, in Case No. 17652, and its most recent tariff sheet revisions became effective on May 27, 2011, in WN-2011-0353. Pursuant to that CCN, Respondent provides water service to approximately 105 residential customers in Boone County, Missouri.

4. Respondent John Kuhle on information and belief is the owner or operator of Respondent Smithview H2O Company and is responsible for that Respondent's

failure to file annual reports, pay annual assessments, and to provide safe and adequate service.

5. Respondent Kuhle H2O LLC is a Missouri limited liability company in good standing, formed on October 16, 2014, for the purpose of water company management. Its registered agent is John J. Kuhle, 802 East County Line, Clark, MO 65243.

### **General Allegations**

6. Respondents Smithview H2O Company, John Kuhle, and Kuhle H2O LLC, or some of them, own, control and manage water sources and other plant and infrastructure by which they sell water to the public for gain and are therefore a “water corporation” as defined by § 386.020(59), RSMo and a “public utility” as defined by § 386.020(43), RSMo, and thus are subject to the jurisdiction of this Commission pursuant to § 386.250(3), RSMo.

7. Section 386.390.1, RSMo authorizes the Commission to entertain a complaint “setting forth any act or thing done or omitted to be done by any...public utility...in violation, or claimed to be in violation, of any provision of law, or of any rule, or order or decision of the commission.”

8. Section 386.600, RSMo provides, “an action to recover a penalty...under this chapter or to enforce the powers of the commission under this or any other law may be brought in any circuit court in this state in the name of the state of Missouri and shall be commenced and prosecuted to final judgment by the general counsel to the commission.”

## **COUNT ONE**

### **Respondents failed to submit Smithview's 2014 annual report**

9. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 8, above.

10. Section 393.140(6), RSMo requires every water corporation to file with the Commission an annual report, and Rule 4 CSR 240-3.640(1) requires the annual report to be filed with the Commission on or before April 15 of each year.

11. Respondents did not file Smithview's 2014 annual report by April 15, 2015.

12. On July 8, 2015, Staff mailed a letter to the Company notifying Respondents that the Commission had not received the Company's 2014 annual report and that the Respondents would be subject to legal action if the Company did not file its 2014 annual report by August 8, 2015.

13. As of the date of this filing, Respondents have failed, omitted, or neglected to file Smithview's calendar year 2014 annual report.

14. Section 393.140(6), RSMo states, "[a]ny such person or corporation which shall neglect to make any such report or which shall fail to correct any such report within the time prescribed by the commission shall be liable to a penalty of one hundred dollars and an additional penalty of one hundred dollars for each day after the prescribed time for which it shall neglect to file or correct the same..."

**WHEREFORE**, Staff respectfully requests the Commission give notice to the Respondents as required by law and, after the opportunity for hearing, issue an order for Count One that finds the Respondents failed, omitted, or neglected to file an annual

report for 2014 and authorizes the General Counsel's Office to bring a penalty action against the Respondents in circuit court as provided in Sections 386.600 and 393.140(6), RSMo.

## **COUNT TWO**

### **Respondents failed to pay Smithview's fiscal year 2015 assessment**

15. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 14, above.

16. Section 386.370.5 RSMo provides:

In order to enable the commission to make the allocations and assessments herein provided for, each public utility subject to the jurisdiction of the commission...shall file...on or before March thirty-first of each year, a statement under oath showing its gross intrastate operating revenues for the preceding calendar year, and if any public utility shall fail to file such statement within the time aforesaid the commission shall estimate such revenue which estimate shall be binding on such public utility for the purpose of this section.

17. Respondents did not file Smithview's 2013 Statement of Revenue with the Commission and thus its revenue was estimated.

18. Section 386.370.2 RSMo, states:

The Commission shall allocate to each group of public utilities the gross intrastate operating revenues of such group during the preceding calendar year. The Commission shall then assess the amount allocated to each public utility in proportion to their respective gross intrastate operating revenues during the preceding calendar year.

19. On June 25, 2014, the Commission, in Case No. AO-2014-0359, issued its Assessment Order for Fiscal Year 2015 (Assessment Order) pursuant to Section 386.370 RSMo. The Assessment Order fixed the amount allocated to public water and sewer corporations at \$ 2,614,218.

20. Section 408.020 allows "creditors to receive interest at the rate of nine percent per annum, when no other rate is agreed upon....on accounts after they become due and demand of payment is made[,]" and Complainant is statutorily entitled to prejudgment interest on Smithview's delinquent assessment amount.

21. On June 26, 2014, the Commission's Budget and Fiscal Services sent Respondents notice stating that \$284.40 was due to keep Smithview's account in good standing.

22. On November 14, 2014, the Commission's Budget and Fiscal Services sent Respondents notice that the October 15 quarterly payment amount of \$142.20 needed to be received by December 15, 2014 to keep Smithview's account in good standing.

23. On May 7, 2015, the Commission sent Respondents notice that \$284.40 was due to keep Smithview's account in good standing.

24. As of the date of this filing, Respondents have failed, omitted, or neglected to pay \$284.40 of Smithview's total fiscal year 2015 assessment.

25. Section 386.570.1 RSMo provides that,

Any...public utility which violates or fails to comply with any...law, or which fails to comply with any order, decision, decree, rule direction, demand or requirement, or any part or provision thereof, of the commission in a case in which a penalty has not herein been provided for such...public utility, is subject to a penalty of not less than one hundred dollars nor more than two thousand dollars for each offense.

26. Section 386.570.2, RSMo, provides that "...in case of a continuing violation each day's continuance thereof shall be and be deemed to be a separate and distinct offense."

**WHEREFORE**, the Staff respectfully requests the Commission give notice to the Respondents as required by law and, after the opportunity for hearing, issue an order for Count Two that finds the Respondents have failed to pay the fiscal year 2015 assessment and authorizes the General Counsel's Office to bring a penalty action against the Respondents in circuit court as provided in §§ 386.600, 386.370, and 386.570, RSMo., for the collection of the assessment, penalties, and interest on the assessment amount.

### **COUNT THREE**

#### **Unauthorized Operation of a Public Water Utility**

27. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 26, above.

28. On information and belief, Staff states that Respondent Kuhle H2O LLC is operating an unauthorized water utility that provides water service to the Smithview H2O service territory. Attached hereto as **Appendix A** and incorporated herein by reference is a bill for water services issued by Respondent Kuhle H2O LLC, and attached as **Appendix B** are items of correspondence whereby Respondent Kuhle H2O LLC held itself out to the public as a provider of water services formerly provided by Respondent Smithview H2O.

29. Although Respondent Smithview has been administratively dissolved, it continues in existence. Respondents have not filed anything with the Commission regarding any asset transfer or name change, but are now providing water services to the public for gain under the name Kuhle H2O using Smithview's plant and infrastructure.

30. On December 3, 2015, Staff spoke with a customer within Smithview's service territory who indicated that she received a bill from "Kuhles H2O" and that her payment was returned. She also indicated that the phone number to the utility has been disconnected. During that conversation, the customer said she received a letter<sup>2</sup> earlier this year stating that water service would be changing over to the Kuhle company. The customer sent Staff a copy of a bill dated August 22, 2015, a redacted copy of which is attached hereto as **Appendix A**. The bill suggests a connection with Smithview H2O Company.

31. Kuhles H2O is not registered in EFIS and does not have a Certificate of Convenience and Necessity from the Missouri Public Service Commission authorizing it to provide water service to the public for gain.

32. Section 386.020(59), RSMo., defines "water corporation" to include "every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees, or receivers...owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station, distributing or selling for distribution, or selling or supplying for gain any water[.]"

33. Pursuant to § 386.020(43), RSMo., a water corporation is a public utility and is subject to the jurisdiction, control, and regulation of this Commission.

34. Section 393.170.2, RSMo., provides in pertinent part, "[n]o such corporation shall exercise any right or privilege under any franchise hereafter granted, or under any franchise heretofore granted but not heretofore actually

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<sup>2</sup> Appendix B



exercised...without first having obtained the permission and approval of the commission.”

35. Missouri courts have held that entities act as public utilities when they sell water to the public for compensation and have undertaken the responsibility to provide water service to all members of the public within their capability.<sup>3</sup>

36. By the conduct described above, Respondents Kuhle H2O LLC and John Kuhle have acted as a water corporation and a public utility within the intendments of § 386.020, RSMo., and have sold water to the public for compensation and have undertaken the responsibility to provide water service to all members of the public within his capability.

37. By the conduct described above, Respondent Kuhle H2O LLC has violated § 393.170.2, RSMo., which forbids any corporation from acting as a public utility without prior authorization from the Commission in the form of a certificate of convenience and necessity.

**WHEREFORE**, Staff prays that the Commission will give due notice to the Respondents and, after hearing, determine that Respondents have violated Missouri statutes as set out above, and thereupon authorize its General Counsel to seek in Circuit Court the penalties allowed by law; and grant such other and further relief as is just in the circumstances.

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<sup>3</sup> *Hurricane Deck Holding Co. v. Public Service Commission*, 289 S.W.3d 260, 264-5 (Mo. App., W.D. 2009); *Osage Water Co. v. Miller County Water Authority, Inc.*, 950 S.W.2d 569, 573-5 (Mo. App., S.D. 1997).

## **COUNT FOUR**

### **Respondents failed to provide safe and adequate service**

38. Complainant hereby adopts by reference and re-alleges the allegations set out in Paragraphs 1 through 37, above.

39. Section 393.130.1, RSMo requires every water corporation to “furnish and provide such service instrumentalities and facilities as shall be safe and adequate and in all respects just and reasonable.” Staff has concerns about Respondent’s ability to continue providing safe and adequate service.

40. Rule 4 CSR 240-10.030, (32) and (33), require water utilities to conform to Missouri Department of Health standards,<sup>4</sup> to treat and filter the water, and to periodically conduct bacteriological analyses.

41. On December 4, DNR contacted Staff and stated that the agency has worked several complaints at the Smithview H2O/Kuhle H2O facility and has encountered problems getting samples collected and keeping the system disinfected. The DNR representative also indicated the system is delinquent in paying laboratory and primacy fees, and the owner – Respondent Kuhle -- has been unresponsive.

42. On December 4, 2015, Staff was apprised of Respondents’ potential financial instability, evidenced in the article attached as **Appendix C** and incorporated herein by reference.

43. Section 393.140, RSMo gives the Commission authority to, among other things, supervise water corporations, investigate and ascertain the quality of water

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<sup>4</sup> These rules pre-date the creation of DNR, which now regulates water safety standards.

supplied, and “order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such...water...”

44. On August 28, 2013, Respondent was administratively dissolved for failure to file its annual registration report with the Missouri Secretary of State.<sup>5</sup>

45. Section 351.486.3, RSMo provides,

A corporation administratively dissolved continues its corporate existence but may not carry on any business except that necessary to wind up and liquidate its business and affairs under section 351.476 and notify claimants under sections 351.478 and 351.482, and any officer or director who conducts business on behalf of a corporation so dissolved except as provided in this section shall be personally liable for any obligation so incurred.

46. Section 351.486.4 provides, “The administrative dissolution of a corporation does not terminate the authority of its registered agent.”

47. Section 393.140, RSMo gives the Commission authority to, among other things, supervise water corporations, investigate and ascertain the quality of water supplied, and “order such reasonable improvements as will best promote the public interest, preserve the public health and protect those using such...water...”

**WHEREFORE**, the Staff respectfully requests the Commission give notice to the Respondents as required by law and, after the opportunity for hearing, issue an order for Count Four that finds the Respondents have failed to provide safe and adequate service, directs the immediate correction of the deficiencies set out above, and authorizes the General Counsel’s Office to bring a penalty action against the Respondent in circuit court as provided in §§ 386.600, 393.130, and 393.140 RSMo.

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<sup>5</sup> Document is available at <https://bsd.sos.mo.gov/BusinessEntity/BusinessEntityDetail>.

Respectfully submitted,

**/s/ Marcella L Mueth**

Assistant Staff Counsel

Attorney for the Staff of the

Missouri Bar No. 66098

Attorney for the Staff of the

Public Service Commission

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[Marcella.Mueth@psc.mo.gov](mailto:Marcella.Mueth@psc.mo.gov)

Kuhles H2O  
708 West Cunningham Dr Apt 1  
Columbia, MO. 65202  
(573) 397-4685

Bill To: [REDACTED]  
[REDACTED] MOBERLY DRIVE  
COLUMBIA MO 65202

Service Address: [REDACTED]  
[REDACTED] MOBERLY DRIVE  
COLUMBIA MO 65202

Account #: [REDACTED]  
Bill Date: 08/22/15

Route#: [REDACTED]

Service from: 1/1/08/14 to 12/31/14

Due by: 09/22/15

Amount Due: [REDACTED]

TO INSURE PROPER CREDIT - RETURN THIS PORTION WITH YOUR PAYMENT

Water		Total	
Water fixed charge:	5.31	Previous Balance:	[REDACTED]
Gallons Used:	1280	Payments - Thank You	[REDACTED]
Usage Charge:	4.30	Balance Forward:	[REDACTED]
Sub Total:	9.61	Arrearage:	[REDACTED]
		Service Charges:	0.00
Meter Readings:	Prior: [REDACTED] Current: [REDACTED]	Current Water Charge:	9.61
		Adjustments:	0.00
		Misc. Charge:	
		Tax:	0.00
		Current Bill Total:	9.61
Amount [REDACTED]			

PLEASE NOTE: A COPY OF THE 2012 CONSUMER CONFIDENCE REPORT IS POSTED AT SMITHVIEW H2O COMPANY OFFICE AND IS AVAILABLE UPON REQUEST.

SUBMIT PAYMENT TO:  
KUHLES H2O  
708 West Cunningham Dr Apt A  
Columbia, MO 65202  
PH: (573) 397-4685

Kuhles LLC

Brian Tallberg  
Operations Manager  
Kuhles Enterprises  
708 West Cunningham Drive  
Columbia, MO 65202

**Date 11/11/14**

708 West Cunningham Drive  
Apartment 1  
Columbia, MO 65202  
T 573-397-4685  
kuhlesllc@gmail.com

Dear Customer

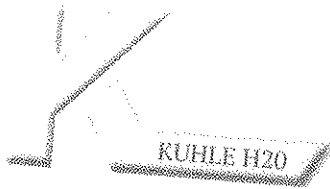
Kuhle's Enterprises has recently acquired the Smithville Water Company. We are in the process of *transitioning ownership and responsibilities*. The previous owners have done an outstanding job of running the water company and we at Kuhle's Enterprises hope to maintain the same level of customer service you have come accustomed to. However, there will be some minor changes to maintenance and billing .

All future payments will be made to Kuhle's H2O and will be mailed too or made in person at the office address of 708 West Cunningham Drive Apartment 1. Please be patient while we go thru the process of installing a payment drop box and establishing fixed office hours. Payments accepted will be Check, Cash or Money Orders

Sincerely yours,

Brian Tallberg  
Operations Manager  
Ph: 573-397-4685





Brian Tallberg  
Operations Manager  
Kuhles Enterprises  
708 West Cunningham Drive  
Columbia, MO 65202

**Date 12/26/2014**

708 West Cunningham Drive  
Apartment 1  
Columbia , MO 65202  
T 573-397-4685  
kuhlesllc@gmail.com

Dear Customer

Kuhle's Enterprises has completed the acquisition of Smithville Water Company and transferred ownership responsibilities. The previous owners have done an outstanding job of running the water company and we at Kuhle's Enterprises hope to maintain the same level of customer service you have become accustomed to. However, there will be some minor changes to maintenance and billing .

All future payments will be made to Kuhle's H2O, and will be mailed to or made in person at the office address of 708 West Cunningham Drive Apartment 1 (a payment drop box has been installed). **Any payments sent to the previous owner will not be credited to your water bill.** Payments accepted will be Check, Cash or Money Orders, we are in the process of setting up to accept credit card payments

Sincerely,

Brian Tallberg  
Operations Manager  
Ph: 573-397-4685

Kuhle H2O

Jeremiah Newell  
Operations Manager  
Kuhles H2O  
708 W. Cunningham Drive  
Columbia, MO 65202  
**Date 06/22/15**

Dear Customer,

As new acting Operations Manager for Kuhle's H2O I wish to introduce myself and apologize for the late nature of billing the last two months. This has since been corrected and all future billing will be sent according to tradition. As you look at your bill you will notice that the "Service From" date is incorrect, showing 11/06/14 to 12/21/14. It was an error the computer automatically reset the date to when I had to recalculate the missed bill period and from now on the date will appear correctly. This does not affect the amount of water used or the amount charged. The amount used will show to be approximately twice what the normal bill would show because of the missed billing periods, and the charged amount will reflect this as well. Again we apologize for any inconvenience this may have caused and look forward to your continued business. Any questions feel free to call at (573) 397- 4685.



NEWS

# TARGET 8: Sturgeon business closes without paying employees

Posted: Oct 12, 2015 8:43 PM by Taeler De Haes, KOMU 8 Reporter  
Updated: Oct 13, 2015 12:38 AM

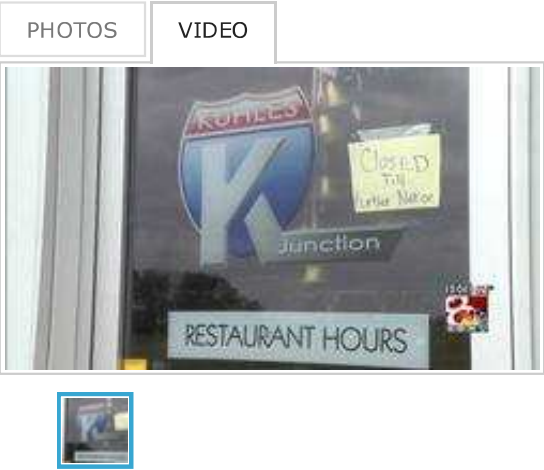
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Rating: 0.0 (0 votes)



STURGEON – No paychecks and no answers. That’s the story for 22 employees after the closure of Kuhle’s Junction, a restaurant and gas station combo in Sturgeon.

The company unexpectedly closed on Sept. 29, failing to tell employees or even give them a warning.

All that’s left is an empty parking lot with a single sign on the door stating, “closed ‘till further notice.”

“This is a 20 mile drive for me,” head waitress Meghan Price said. “I show up, and I notice there are no cars in the employee parking lot. I tried to go into the back door where the kitchen is, and it is locked. No one contacted me.”

Price worked at Kuhle’s Junction for a little more than a year and said she never expected anything like this.

John and Sandy Kuhle are the co-owners of Kuhle’s Junction. The two are in the middle of a divorce and as of roughly two months ago, he said she became the manager of the restaurant/convenient store.

“My accounts are frozen because of the divorce. I have no access to my money. I’m trying to pay my employees even though it’s Sandy’s job, but she’s nowhere to be found,” John Kuhle said.

He showed KOMU 8 News documentation detailing the management transition from him to her, and it states: “Sandra Jean Kuhle is the current General Manager for Kuhles LLC. She is authorized to conduct 100% of all financial, and assets transactions as she sees fit; Furthermore, she shall be able to execute any actions needed to run the company on behalf of the company

with permission from its members or owners.”

Carol Vorhees is a single mother of two and worked at the convenience store side of the business. She told KOMU 8 she and the other employees have only talked to John and Sandy Kuhle via text message.

“For the longest time he ignored us, and finally he responded saying he had no access to his money. He told us he didn’t pay us because he didn’t have access to our hours,” Vorhees said. “For him to say we need to be patient and have empathy for him is ridiculous.”

Price also said some of the text messages were not as pleasant.

“Sandy sent me a text that was pretty hateful,” she said, saying it read ‘I. Don’t. Have. Any. Money. Please drop the attitude.’

This was in response to Price asking when her paycheck would be ready for pick-up.

John Kuhle said he opened an account and deposited \$18,000 into it. The total in paychecks owed to employees is \$6000. E-mails from his personal account that he forwarded to KOMU 8 mention the possibility of tax liens if the payroll is not taken care of as soon as possible. On Aug. 7 of this year, he had a tax lien filed for the taxable period of March 1 – 31 of 2015, owing \$849.46.

He is also the CEO of Kuhles LLC, a domestic limited-liability company.

KOMU 8 tried contacting Sandy Kuhle for a statement multiple times but she never returned any phone calls.

Despite the back and forth, both John and Sandy Kuhle are listed as co-owners according to the Boone County Assessor’s office, thereby making both of them responsible for paying employees.

Just last week, employees did receive a bit of money they’re owed. They got checks worth 58 percent of the first half of their paycheck were six days after the closure, but employees were skeptical to cash them.

“The checks didn’t have the business name on them and they could only be cashed at their bank,” Vorhees said. “I had to drive thirty minutes out of my way to cash it. My bank told me they were unable to cash it because the bank name on the check could not verify that money would be in the account at the time it was cashed.”

On Friday, Oct. 9, employees tried cashing the checks and they were unable to be cashed until they had help from a loan officer, Vorhees said.

So, what does the law say about employees and their pay at the closure of a business?

Looking at Missouri labor laws, section 290.110, RSMo, states:

*“Whenever any person, firm or corporation doing business in this state shall discharge, with or without cause, or refuse to further employ any servant or employee thereof, the unpaid wages of the servant or employee then earned at the contract rate, without abatement or deduction, shall be and become due and payable on the day of the discharge or refusal to longer employ and the servant or employee may request in writing of his foreman or the keeper of his time to have the money due him, or a valid check therefor, sent to any station or office where a regular agent is kept; and if the money or a valid check therefor, does not reach the station or office within seven days from the date it is so requested, then as a penalty for such nonpayment the wages of the*

*servant or employee shall continue from the date of the discharge or refusal to further employ, at the same rate until paid; provided, such wages shall not continue more than sixty days."*

Missouri Department of Labor spokeswoman Lauren Schad said if someone believes they are not being paid correctly, they could either complete a [minimum wage complaint form online](#), contact the Division of Labor Standards at 573-751-3403 or send an email to the department.

"After the Division of Labor Standards receives a minimum wage complaint, the complaint is reviewed and assigned to an investigator to conduct an investigation. If the Division determines that back wages are owed to the employee, it may only calculate the back wages due based on the difference between the minimum wage rate, currently \$7.65 per hour, and the wage rate actually paid," Schad said. "The employee may still have a basis, such as an employment contract requiring payment at the higher wage rate, to pursue a private legal remedy on his/her own with regard to the remaining wages."

Price e-mailed a complaint to the Department of Labor and received a response stating since the business doors are closed, she would have to take the employer to court.

Since Kuhle's Junction did not employ 100 or more workers, it was not required by law to inform employees of the closure.

"Everybody there has been affected by this brutally. We all have financial obligations that need to be met on a monthly basis and we are not able to meet those obligations. People's electricity has been turned off, they can't put gas in their car to get to job interviews, they are completely stuck without this money that they have earned," Kassy Wille, a college student at Central Methodist University and a former server at the restaurant. "When you're dragged into the he-said-she-said there comes a point where you don't care anymore. We just want the money we earned."

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**Target 8: Sturgeon business closes without paying employees**

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