

**STATE OF MISSOURI  
PUBLIC SERVICE COMMISSION**

At a session of the Public Service  
Commission held at its office in  
Jefferson City on the 23<sup>rd</sup> day of  
October, 2013.

Staff of the  
Missouri Public Service Commission,  
  
Complainant,

v.

Consolidated Public Water Supply District  
C-1 of Jefferson County, Missouri,

and

City of Pevely, Missouri,  
Respondents.

**File No. WC-2014-0018**

**ORDER DENYING MOTION TO DISMISS**

Issue Date: October 23, 2013

Effective Date: November 4, 2013

**Procedural History**

On July 22, 2013, the Staff of the Missouri Public Service Commission ("Staff") filed a complaint with the Missouri Public Service Commission against the Consolidated Public Water Supply District C-1 of Jefferson County, Missouri ("District") and the City of Pevely, Missouri ("City") (jointly, "Respondents"). Staff alleged in its complaint that Respondents violated Section 247.172<sup>1</sup> by entering into a written agreement in 2007, which designated the boundaries of the water service area for each entity, without seeking prior approval from the Commission. For relief, Staff's three-count Complaint sought a determination that

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<sup>1</sup> Unless otherwise indicated, all statutory references are to RSMo 2000.

each day that Respondents violated Section 247.172 was a separate offense for which penalties could be requested at circuit court.

On August 19, 2013, Respondents filed *Respondents' Joint Motion to Dismiss for Failure to State a Claim Upon Which Relief Can Be Granted*. Respondents argue that the Commission lacks jurisdiction over the agreement between the District and the City. Since no water corporation subject to the Commission's jurisdiction is involved in the agreement, Respondents argue Section 247.172 does not grant the Commission any authority over their agreement, which only involves a water district and a municipality.<sup>2</sup> Respondents further argue that the Commission may only hear complaints concerning Commission approved territorial agreements.<sup>3</sup>

On October 1, 2013, Staff filed a response to the motion to dismiss. Staff contends Section 247.172 provides the Commission with exclusive jurisdiction over territorial agreements between municipalities and public water supply districts and that Section 386.390 authorizes the Commission to hear a complaint involving a claimed violation of any law, rule or order of the Commission. Staff further argues that Sections 386.570 and 386.600 authorizes the Commission to seek the recovery of penalties for such violation at the circuit courts.

On October 4, 2013, Respondents filed their *Joint Reply to Staff's Response to Motion to Dismiss*. Respondents again reasserted their position that Section 247.172 does not grant the Commission jurisdiction over a municipality and a water district.

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<sup>2</sup> See ¶ 12-13 of Respondent's motion.

<sup>3</sup> See ¶ 14 of Respondent's motion.

## Jurisdiction

The Commission is a creature of statute and only has the powers granted to it by the legislature.<sup>4</sup> Staff and Respondents disagree over the jurisdiction granted to the Commission under Section 247.172, concerning territorial agreements between public supply water districts and municipally owned utilities. Section 247.172.1, RSMo states:

Competition to sell and distribute water, **as between and among** public water supply districts, water corporations subject to public service commission jurisdiction, **and** municipally owned utilities may be displaced by written territorial agreements, but only to the extent hereinafter provided for in this section<sup>5</sup>. (Emphasis added.)

Respondents contend that “as between and among” along with “and” in subsection 1 of the statute is evidence of the legislature’s intent for all three entities (1. public water supply district; 2. water corporations subject to commission jurisdiction; and 3. municipally owned utilities) to be parties to a territorial agreement before the Commission’s jurisdiction can be invoked. Staff argues that “as between and among” as used in the statute means that a territorial agreement under the jurisdiction of the Commission is any agreement involving any two or more of the different entities; be it a municipality, public water supply district, or a water corporation.

The primary rule of statutory construction is to ascertain the intent of the legislature from the language used and to consider the words used in a statute based on their plain and ordinary meaning.<sup>6</sup> It is presumed that every word has meaning.<sup>7</sup> The usual and

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<sup>4</sup> *State ex rel. KCPL v. Buzard*, 168 S.W.2d 1044, 1046 (Mo. 1943).

<sup>5</sup> Section 247.172.4, RSMo states: “Before becoming effective, all territorial agreements entered into under the provisions of this section...shall receive the approval of the public service commission by report and order.”

<sup>6</sup> *State ex rel. KCP&L Greater Missouri Operations Co. v. Cook*, 353 S.W.3d 14,18 (Mo.App. 2011)(citing *State ex rel. Unnerstall v. Berkemeyer*, 298 S.W.3d 513, 519 (Mo. Banc 2009).

<sup>7</sup> *MO Prosecuting Attorneys v. Barton County*, 311 S.W.3d 737 (Mo. 2010) (internal citation omitted).

commonly understood meaning of a word is derived from the dictionary.<sup>8</sup> Black's Law Dictionary defines "among" as "[m]ingled with or in the same group or class," while it defines "between" as "[s]trictly applicable only with reference to two things." Black's Law Dictionary 83, 161 (6<sup>th</sup> ed. 1990). As used in the statute, the plain meaning of the words "among" and "between" is consistent with Staff's interpretation of the statute, whereby the statute applies to agreements involving any two or more of the identified entities. To interpret the statute as Respondents suggest would make the use of both "among" and "between" redundant or meaningless. Since it is presumed that every word has meaning,<sup>9</sup> this would be an absurd result. Neither Missouri Courts nor the Commission presume that the legislature enacts meaningless provisions.<sup>10</sup>

In their memorandum in support of their motion to dismiss, Respondents cite to only one case in support of their argument that a water corporation subject to the Commission's jurisdiction is a necessary party to a territorial agreement before the Commission's jurisdiction is triggered. In *City of Harrisonville v. Public Water Supply District 9 of Cass County*, a water supply district entered into a twenty-year water service contract with a city in 1974, which was renewed for an additional twenty years.<sup>11</sup> Citing to *City of Harrisonville*, Respondents state, "The appellate court stated that it analyzed 'those sections of Chapter 247 applicable to county water supply districts.'"<sup>12</sup> Respondents go on to argue that the court in *City of Harrisonville* never found the contract between the district and city was invalid after analyzing certain statutes, nor did it "find that the agreement was subject to the

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<sup>8</sup> *Id.* Citing *Boone County v. State*, 631 S.W.2d 321, 409 (Mo. Banc 1982)

<sup>9</sup> *MO Prosecuting Attorneys v. Barton County*, 311 S.W.3d 737 (Mo. 2010) (internal citation omitted).

<sup>10</sup> *Day v. Wright County*, 69 S.W.3d 485, (Mo.App. 2000).

<sup>11</sup> *Id.*

<sup>12</sup> Page 3 of *Respondents' Memorandum in Support of Their Motion to Dismiss*; citing *City of Harrisonville v. Public Water Supply District 9 of Cass County*, 49 S.W.3d 225 (Mo.App. S.D. 2001).

jurisdiction of the Commission.”<sup>13</sup> It does not escape the Commission’s notice that the direct quote Respondents cite to in their memorandum is not attributable to the court in *City of Harrisonville*. Instead, it was from a 1966 court decision in *Mathison v. Public Water Supply District No. 2 of Jackson County*<sup>14</sup>, which was cited in a brief from a party to the *City of Harrisonville* case. If Respondents had examined the *City of Harrisonville* case more closely they would have recognized the court specifically stated, “Mathison is not applicable to the present case because that case involved a proceeding, pursuant to section 247.170, to detach all of the area of a water district that was within the corporate limits of the city.”<sup>15</sup> Although Respondents correctly point out that Section 247.172 was first enacted in 1991, after the *City of Harrisonville* case was decided in 2001, they neglect to mention that the court in *City of Harrisonville* never discussed Section 247.172; instead the court dealt only with a contract entered into in 1974 that continued uninterrupted until 1999.<sup>16</sup>

Commission Rule 4 CSR 240-2.070(7) gives the relevant standard for dismissing complaints. That rule allows the Commission to dismiss a complaint for failure to state a claim upon which relief could be granted. The Commission will assume that the facts in the complaint are true when contemplating granting a motion to dismiss for failure to state a claim.<sup>17</sup> Using that standard, the Commission finds that Staff’s complaint states a claim; namely, that it is *possible* that Respondents entered into a territorial agreement in 2007 without seeking the Commission’s approval. The Commission will ultimately

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<sup>13</sup> Page 3 of *Respondents’ Memorandum in Support of Their Motion to Dismiss*

<sup>14</sup> 401 S.W.2d 424 (Mo. 1966).

<sup>15</sup> *City of Harrisonville v. Public Water Supply District 9 of Cass County*, 49 S.W.3d 225 (Mo.App. S.D. 2001).

<sup>16</sup> *Id.*

<sup>17</sup> See *In re Comcast IP Phone*, Commission File No. TC-2007-0111, Order Denying Motion to Dismiss and Directing Respondent to File its Answer, December 5, 2006 (*citing Eastwood v. North Central Missouri Drug Task Force*, 15 S.W.3d 65, 67 (Mo.App. 2000)).

address whether that is true after hearing. If Respondents are found to have failed to comply with Section 247.172, Section 386.390<sup>18</sup> authorizes the Commission to hear the complaint and Sections 386.570<sup>19</sup> and 386.600<sup>20</sup> authorizes the assessment and recovery of penalties against Respondents.

Motion denied.

**THE COMMISSION ORDERS THAT:**

1. The joint motion of Consolidated Public Water Supply District C-1 of Jefferson County and the City of Pevely, Missouri, to dismiss the complaint filed by the Staff of the Commission is denied.
2. This order shall become effective on November 4, 2013.

**BY THE COMMISSION**



A handwritten signature in cursive script that reads "Morris L. Woodruff".

Morris L. Woodruff  
Secretary

R. Kenney, Chm., Stoll, W. Kenney  
and Hall, CC., concur.

Burton, Regulatory Law Judge

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<sup>18</sup> Section 386.390, RSMo authorizes a complaint to be made with the Commission against any corporation, person or public utility for violating provisions of law.

<sup>19</sup> Section 386.570, RSMo authorizes a penalty of not less than one hundred dollars nor more than two thousand dollars against any corporation, person or public utility which violates a law, order, rule or decision of the Commission.

<sup>20</sup> Section 386.600, RSMo authorizes an action to recover a penalty to be brought in circuit court.