

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

Staff of the)
Missouri Public Service Commission,)
)
Complainant,)
)
vs.)
)
Consolidated Public Water Supply District,)
C-1 of Jefferson County, Missouri,)
)
and)
)
City of Pevely, Missouri,)
)
Respondents.)

File No. WC-2014-0018

APPLICATION FOR REHEARING REGARDING REPORT AND ORDER
ISSUED JANUARY 21, 2015

COMES NOW Respondent Consolidated Public Water Supply District C-1 of Jefferson County, Missouri, by and through undersigned counsel, and for its Application for Rehearing pursuant to section 386.500 RSMo states as follows:

1. This application for rehearing concerns a Report and Order issued by the Public Service Commission of the State of Missouri (hereinafter "Public Service Commission") on January 21, 2015 and to become effective on February 20, 2015, ordering Consolidated Public Water Supply District C-1 of Jefferson County, Missouri (hereinafter referred to as "C-1" or "Respondent") and the City of Pevely (hereinafter referred to as "Pevely") to submit a territorial agreement to the Public Service Commission for approval.

2. The basis of Public Service Commission's Report and Order is that according to Public Service Commission section 247.172 RSMo grants to Public Service Commission exclusive jurisdiction over territorial agreements between a municipal corporation and a water district, that

section 386.390 RSMo authorizes Public Service Commission to hear the matter, that Respondents have violated section 247.172 RSMo and that the Public Service Commission has authority to order the submission of the territorial agreement.

3. On the 19th day of July, 2013, the Staff of the Public Service Commission filed a three count complaint seeking under each count that the Public Service Commission hold a hearing on the complaint and determine if a violation of section 247.172 RSMo, to deem each date of violation a separate offense, and to grant leave to Public Service Commission's General Counsel to proceed in Circuit Court to seek penalties against C-1 and Pevely.

4. On June 11, 2014 an evidentiary hearing was held. Post hearing briefs were filed by the parties and the Public Service Commission issued its Report and Order on January 21, 2015.

5. The Public Service Commission's Report and Order requiring C-1 and Pevely to submit the territorial agreement to the Public Service Commission is unlawful, unjust and unreasonable as follows:

a. Section 247.172 RSMo does not apply to the agreement of C-1 and Pevely as said agreement does not displace competition. Respondent incorporates section A. of its Memorandum in Support of Its Application for Rehearing as if fully set forth hereat. Statutes and case law prohibit C-1 and Pevely from competing with each other in that:

1) Case law has found that the provisions of Section 247.170 RSMo are mandatory for a municipality to serve area annexed into its boundaries that are within the boundaries of a public water supply district. *See 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).

2) Case law has stated that the legislature did not intend for a city and a public water supply district to serve the same areas. *See Camden County Public Water Supply*

District #4 et al. v. Village of Sunset Beach, 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).

3) Said agreement by its terms does not apply to territory not within one of the corporate boundaries of C-1 and Pevely. As by case law and legislation, C-1 and Pevely can only compete in areas that they are serving outside their corporate boundaries, and as C-1 and Pevely are not serving outside their boundaries, competition has not been displaced by the agreement.

b. Section 247.172 RSMo does not apply to the agreement of C-1 and Pevely as section 247.172 RSMo 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).

c. The Public Service Commission does not have authority to order C-1 and Pevely to submit the territorial agreement as said agreement is *void ab initio* as an *ultra vires* contract:

1) By the plain reading of the statute, the agreement is ineffective until

approved by the Public Service Commission and the Public Service Commission only has jurisdiction to entertain and hear complaints involving “any commission-approved territorial agreement.” Respondent incorporates as if fully set forth hereat section C of its Memorandum in Support of Its Application for Rehearing. The finding that jurisdiction is had by the Commission to hear the complaint under §386.390 RSMo would make the language of §247.172.7 superfluous and of no effect and the presumption exists that “the legislature intends that every word, clause, sentence, and provision of a statute have effect.” *State ex rel Vincent v. D.C., Inc.*, 265 S.W.3d 303, 308 (Mo. App. E.D. 2008).

2) By a plain reading of §247.172.4 and .7 RSMo with §432.070 RSMo, the Commission has no authority to order C-1 and Pevely to file the territorial agreement as same is *void ab initio* as an *ultra vires* contract if §247.172 RSMo is applicable to the agreement. Respondent incorporates as if fully set forth hereat section D of its Memorandum in Support of Its Application for Rehearing. For the purpose of §432.070 RSMo, public water supply districts are municipal corporations. *Public Water Supply District No. 16 v. City of Buckner*, 44 S.W.3d 860, 864 (Mo. App. W.D. 2001). The courts have held that the provisions of § 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. When reading §247.172 RSMo in conjunction with the provisions of §432.070 RSMo and the case law thereunder, it is clear why the legislature only granted the Public Service Commission authority over those territorial agreements that were approved via application and hearing as any agreement entered into by a municipality or a public water supply district that was not presented for approval would be void and unenforceable.

6. The pertinent facts regarding the Motion for Rehearing are as follows:

a. C-1 is a public water supply district formed under and subject to the

provisions of Chapter 247 RSMo for the purpose of supplying water to the residents within its corporate boundaries which are located within Jefferson County, Missouri.

b. Pevely is a fourth class city authorized to engage in the provision of municipal utilities pursuant to Chapters 79 and 91 RSMo.

c. That certain areas within the boundaries of C-1 as originally formed have been annexed into the corporate limits of Pevely.

d. That prior to 2007 no action pursuant to sections 247.160 RSMo through 247.170 RSMo had been undertaken by C-1 and Pevely.

e. That in 2006 suit was filed in the 23rd Judicial Circuit at Hillsboro, Jefferson County Missouri, by C-1 against Pevely in Cause No. 23CV306-1286 to enjoin Pevely from providing water service to certain areas of overlapping territory as the provisions of Section 247.170 RSMo had not been followed and no agreement under Section 247.160 RSMo had been reached.

f. That in 2007 a service agreement entitled a Territorial Agreement (Exhibit 1 at PSC hearing) was entered into by C-1 and Pevely agreeing on the service to be provided in the overlapping territory. The agreement, set forth the area to be serviced, being the subdivisions known as The Hunters Glen, Tiara at the Abbey, and the Vinyards at Bushberg, was for a set term of ten years ending in 2017.

7. Sections 247.160 through 247.170 RSMo provide the statutory provisions regarding service of territory between public water supply districts and municipal water utilities whose territorial boundaries overlap.

8. The Public Service Commission is a state agency whose general jurisdiction is set forth in Section 386.250 RSMo.

9. Nothing in Section 386.250 RSMo grants Public Service Commission jurisdiction over a municipality, or a public water supply district. In fact, Section 386.250 RSMo expressly states that ... “nothing in this section shall be construed as conferring jurisdiction upon the commission over the service or rates of any municipality around water system in any city...” Nothing in section 386.390 RSMo sets forth any authority of the Public Service Commission to override the jurisdictional provisions of section 386.250 RSMo.

10. 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).

11. “Courts may only look outside the plain meaning of the statute only when the language is ambiguous or would lead to an illogical result.” *In re the Estate of Hayden*, 258 S.W.3d 505, 508 (Mo. App. E.D. 2008) citing *State ex rel. Broadway-Washington Associates, LTD. v. Manners*, 186 S.W.3d 272, 275 (Mo banc 2006).

12. “The primary rule of statutory construction is to determine the intent of the legislature from the plain and ordinary meaning of the words used in the statute.” “Every word, clause, sentence and section of a statute should be given meaning.” *In re the Estate of Hayden*, 258 S.W.3d 505, 508 (Mo. App. E.D. 2008) citing *Bari v. Lindell Trust Co.*, 996 S.W.2d 655, 659 (Mo. App. E.D. 1999).

13. Under a plain reading of the statute, the Public Service Commission only has jurisdiction to hear complaints over territorial agreements which displace competition 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. Otherwise, a territorial agreement to which §247.172 RSMo applies is ineffective as provided in subsection 4 of §247.172 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.”

14. Section 386.390 RSMo does not give the Public Service Commission jurisdiction other than what is set forth in Section 386.250 RSMo and does not trump the specific language of §247.172 RSMo.

15. Section 432.070 RSMo provides that any contract entered into by a municipal corporation which is not authorized by law is void and unenforceable. Section 432.070 RSMo is given a strict and literal interpretation “unrelieved by considerations of equity which relieve against hardship and unjust enrichment of private persons...” Pace v. Land Clearance for Redevelopment Authority, 713 S.W.2d 34, 36 (Mo. App. W.D. 1986).

16. The Public Service Commission determined that the agreement of C-1 and Pevely violated §247.172 RSMo. Once the finding of violation of law is made, said agreement is *void ab initio* as an *ultra vires* contract.

17. Respondent incorporates as if fully set forth hereat any portion of its Memorandum in Support of Its Motion for Rehearing not previously incorporated in the preceding paragraphs.

WHEREFORE Respondent Consolidated Public Water Supply District C-1 of Jefferson County, Missouri, prays the Public Service Commission grant a rehearing and for such other and further orders as are just under the circumstances.

/s/ Bianca L. Eden

Bianca L. Eden

#50301

WEGMANN LAW FIRM

P.O. Box 740

455 Maple Street

Hillsboro, MO 63050

(636) 797-2665 or 296-5769

beden@wegmannlaw.com

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

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was mailed by U.S. Mail on this 18th day of January, 2015, unless served electronically via EFIS to:

Kevin A. Thompson
Chief Staff Counsel
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
kevin.thompson@psc.mo.gov

Office of Public Counsel
P.O. Box 2230
200 Madison Street
Suite 650
Jefferson City, MO 65102
opcservice@ded.mo.gov

Terrance J. Good
LASHLY & BAER, P.C.
Attorneys for Respondent
City of Pevely, Missouri
714 Locust Street
St. Louis, Missouri 63101
tjgood@lashlybaer.com

/s/ Bianca L. Eden_____