

COUNTY PUBLIC WATER SUPPLY
DISTRICTS: MISSOURI PUBLIC
SERVICE COMMISSION:



Public Service Commission of Missouri does not have jurisdiction over county public water supply districts incorporated under Sections 247.010 to 247.-220, RSMo 1949, as amended; and property owner in such water supply district seeking to enforce extension of services to his property, must seek his remedy through the circuit court.

January 8, 1958

Honorable John W. Joynt
Member, Missouri State Senate
St. Louis 1, Missouri

Dear Sir:

Your request for a formal opinion in relation to Public Water Supply District No. 3, St. Louis County, presents the following question:

If a property owner in a county public water supply district, formed under Sections 247.010 to 247.220 RSMo 1949, as amended, seeks to force extension of such water district's services to his property, is his remedy obtained through application to the Missouri Public Service Commission, or by suit in the circuit court?

A review of the statutes referred to in the preceding question does not point out a remedy for the property owner's alleged wrong done to him, but we do find an obligation in this respect alluded to in the following language from *Grossman v. Public Water Supply District No. One of Clay County*, 339 Mo. 344, 1.c. 352, 96 S.W. (2d) 701:

"A legislative intent is plainly disclosed that the system shall be properly operated and maintained and that necessary extensions and enlargements shall be made."

While the query posed presents a "service" question as distinguished from a "rate" problem, we feel that the following language from Section 247.110 RSMo 1949, in the basic law governing

Honorable John W. Joynt

county public water supply districts, makes it necessary to review the Missouri Public Service Commission Law to find the extent of its regulatory powers, if any, over county public water supply districts:

"Subject to such regulation and control as may now exist in or may hereafter be conferred upon the public service commission of the state of Missouri, the fixing of rates or charges for water or water service furnished by a district incorporated under sections 247.010 to 247.220 is hereby vested in its board of directors. * * *"

At this point reference is made to Senate Bill No. 154, passed by the 69th General Assembly of Missouri and now found as Section 247.215 RSMo Cum. Supp. 1957. Such enactment was an amendment to the county public water supply district law we are now considering and constituted a new power to be vested in such districts. Paragraph 1 of Section 247.215 RSMo Cum. Supp. 1957, provides, in part, as follows:

"1. The board of directors of any public water supply district which is dependent upon purchases of water to supply its needs may sell and convey part or all of its water mains, plant, real estate, or equipment to any water corporation as defined in section 386.020, RSMo, if all bonds of the district, whether general obligation bonds constituting a lien on the property within the district, or special obligation or revenue bonds constituting a lien on the income and revenue arising from the operation of the water system: * * *". (Underscoring supplied)

The above quotation from a recent legislative enactment discloses that the legislature was fully cognizant of the fact that a water corporation as defined in Section 386.020 RSMo 1949 of Missouri's Public Service Commission Law was distinguishable from a county public water supply district formed under Sections 247.010 to 247.220 RSMo 1949, as amended.

A rule to guide us in searching out the regulatory powers of the Public Service Commission of Missouri is reflected in language found in *Katz Drug Company v. Kansas City Power & Light Co.*, (Mo. App.) 303 S.W. (2d) 672, 1.c. 679, as follows:

Honorable John W. Joynt

"* * * the commission is a body of limited jurisdiction and has only such powers as are conferred upon it by statutes, and such incidental powers as may be necessary to enable the commission to exercise the powers granted. * * * It 'has no authority to adjudicate and determine individual or personal rights. * * * because under the Constitution the Legislature has no power or authority to invest such Commission with judicial powers.'"

Section 386.250 RSMo 1949, provides, in part, as follows:

"The jurisdiction, supervision, powers and duties of the public service commission herein created and established shall extend under this chapter.

* * * * *

"(7) To all water corporations, and to the land, property, dams, water supplies, or power stations thereof and the operations of same within this state; provided, that nothing contained in this section shall be construed as conferring jurisdiction upon the public service commission 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 386.020 RSMo 1949, Cum. Supp. 1957, a part of the Public Service Commission Law of Missouri, defines "water corporation" in the following language:

"21. The term 'water corporation', when used in this chapter, includes every corporation, company, association, joint stock company or association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever, owning, operating, controlling or managing any plant or property, dam or water supply, canal, or power station,

Honorable John W. Joynt

distributing or selling for distribution,
or selling or supplying for gain any water."
(Underscoring supplied).

Under the laws of their incorporation, county public water supply districts are, by Section 247.020 RSMo 1949, denominated "political corporations of the state of Missouri," as distinguished from private business corporations. Does such a political corporation render its services for gain? We have carefully reviewed Sections 247.010 to 247.220 RSMo 1949, as amended, and have not discovered in such law any indication that such political corporations are clothed with any legal characteristics which would cause them to be referred to as "public utilities" as the same are alluded to in the following language from State ex rel. Washington University v. Public Service Commission, 308 Mo. 328, 1.c. 344, 272 S.W. 971:

"The enactment of the Public Service Act marked a new era in the history of public utilities. Its purpose is to require the general public not only to pay rates which will keep public utility plants in proper repair for effective public service, but further to insure to the investors a reasonable return upon their funds invested. The police power of the State demands as much. We can never have efficient service unless there is a reasonable guaranty of fair returns for capital invested. The woof and warp of our Public Service Commission Act bespeaks these terms. The law would be a dead letter without them, and a commission under the law, that would not read the law in the proper spirit, would be breathing into it the flames of ultimate deterioration of public utilities."

County public water supply districts have no private investors of funds, certify no tax levies except those necessary for the economical and proper management of the districts, and are readily distinguishable from public utility corporations for profit which are subject to the jurisdiction of the Public Service Commission of Missouri. It must therefore be reasonably concluded that a resident property owner in a county public water supply district, formed under Sections 247.010 to 247.220 RSMo 1949, as amended, who seeks to force extension of the water district's services to his property does not enforce such alleged right by invoking the jurisdiction of the Public Service

Honorable John W. Joynt

Commission of Missouri. His alleged right under circumstances peculiar to each case may be protected by invoking the jurisdiction of the circuit court, a court of general jurisdiction having both equity and law jurisdiction.

CONCLUSION

It is the opinion of this office that the Public Service Commission of Missouri is without jurisdiction over county public water supply districts incorporated under Sections 247.010 to 247.220 RSMo 1949, as amended, and a property owner in such water supply district seeking to enforce extension of the water district's services to his property must seek his remedy through the circuit court.

The foregoing opinion, which I hereby approve, was prepared by my assistant, Julian L. O'Malley.

Yours very truly,

John M. Dalton
Attorney General

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