

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

The Staff of the Missouri Public Service Commission,)	
)	
)	
Complainant,)	
)	<u>Case No. WC-2007-0452</u>
v.)	
)	
Suburban Water and Sewer Co. and Gordon Burnam,)	
)	
)	
Respondents.)	

**MEMORANDUM IN SUPPORT OF THE MISSOURI PUBLIC SERVICE
COMMISSION’S SUBJECT MATTER JURISDICTION AND PERSONAL
JURISDICTION OVER RESPONDENT GORDON BURNAM**

COMES NOW the Staff of the Missouri Public Service Commission (Staff) and for its Memorandum in Support of the Missouri Public Service Commission’s Subject Matter Jurisdiction and Personal Jurisdiction Over Respondent Gordon Burnam respectfully states as follows:

PROCEDURAL HISTORY AND STATEMENT OF FACTS¹

Staff filed its initial Complaint and Motion for Expedited Treatment against Suburban Water and Sewer Co. and Gordon Burnam on May 29, 2007.² Staff’s Complaint and Motion for Expedited Treatment is based on violations of a Commission Order disposing of Case No. WR-2005-0455.³ Notice of this Complaint and Motion for Expedited Treatment was issued on June 4, 2007. Staff served its first set of discovery

¹ The procedural history and facts contained in this Memorandum are only those facts and/or procedural history relevant to Respondent Gordon Burnam’s challenge to the Commission’s personal and subject matter jurisdiction and any background facts and/or procedural history required for clarity.

² Respondent Gordon Burnam is the President and sole shareholder of Suburban Water and Sewer Co., a certificated company providing water service in Boone County, Missouri.

³ The Commission’s Report and Order adopted the stipulation and agreement entered into by the parties to dispose of the case. Respondent Gordon Burnam signed the stipulation and agreement as President of Respondent Suburban Water and Sewer Co.

upon Respondent Gordon Burnam on June 5, 2007. On June 8, 2007, Staff filed its First Amended Complaint and Motion for Expedited Treatment. On June 7, 2007, counsel for Respondent Gordon Burnam filed a Special Entry of Appearance for the limited purpose of challenging the Missouri Public Service Commission's (Commission's) personal and subject matter jurisdiction over Respondent Gordon Burnam.

STATEMENT OF THE LAW

In order to adjudicate a case, a tribunal must have jurisdiction over the subject matter and over the parties. *In re Marriage of Hendrix*, 183 S.W.3d 582, 587-88 (Mo.banc 2006). The tribunal must also have jurisdiction to enter a particular judgment in a particular case. *Missouri Soybean Association v. The Missouri Clean Water Commission*, 10 S.W.3d 10, 21 (Mo.banc 2003). A state agency has only the jurisdiction conferred upon it by statute. *Marston v. Juvenile Justice Center of the 13th Judicial Circuit*, 88 S.W.3d 534, 538-39 (Mo.App. W.D. 2002).

The jurisdiction of the Commission extends “[t]o all water corporations, and to the land, property, dams, water supplies, or power stations thereof and the operation of the same within this state. . . .” Section 286.250(3), RSMo (2000). The jurisdiction of the Commission also extends “[t]o all public utility corporations and persons whatsoever subject to the provisions of this chapter herein defined. . . .” Section 386.250(5), RSMo (2000). “Water corporation” is defined as including “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,

distributing or selling for distribution, or selling or supplying for gain any water.”

Section 386.020(58), RSMo (2000) (Supp. 2006).

ARGUMENT

THE MISSOURI PUBLIC SERVICE COMMISSION HAS SUBJECT MATTER JURISDICTION OVER THIS CASE

Subject matter jurisdiction refers to the statutory authority of a tribunal to adjudicate a particular type of case. *Sexton v. Jenkins & Assocs.*, 152 S.W.3d 270, 273 (Mo.banc 2004). Subject matter jurisdiction, unlike personal jurisdiction, is a matter of law and cannot be consented to or waived by the parties. *Hendrix*, 183 S.W.3d at 588. The Commission has subject matter jurisdiction to adjudicate claims based on the operation of water corporations. Section 286.250(3), RSMo (2000). The Commission is authorized to adjudicate a complaint case based on “any act or thing done or omitted to be done by any corporation, person or public utility, including any rule, regulation or charge heretofore established or fixed by or for any corporation, person or public utility, in violation, or claimed to be in violation, of any provision of law, or of any rule or order of the commission. . . .” Section 386.390.1, RSMo (2000); *see also* 4 CSR 240-2.070.

Staff’s complaint in this case is based on the alleged violation of a stipulation and agreement entered into by the parties to resolve Case No. WR-2005-0455. This stipulation and agreement was signed by Respondent Gordon Burnam as President of Suburban Water Co. and was adopted by the Commission in its Report and Order. The Report and Order directed that the terms and conditions of the stipulation and agreement were to be complied with. Violations of a Commission order, as alleged by Staff, fall squarely within the Commission’s subject matter jurisdiction. The Commission clearly has the statutory authority to hear Staff’s Complaint.

THE MISSOURI PUBLIC SERVICE COMMISSION HAS PERSONAL JURISDICTION OVER RESPONDENT GORDON BURNAM⁴

The Commission has been granted jurisdiction over “all public utility corporations and persons whatsoever subject to the provisions of this chapter herein defined. . . .”

Section 386.250(5), RSMo (2000). Chapter 386 of the Revised Statutes of Missouri sets out the powers and duties of the Commission. Several provisions of Chapter 386 refer to “persons.”⁵ Section 386.020(58) uses the word “person” in its enumeration of the entities that can be considered a water corporation subject to the jurisdiction of the Commission. The Section outlining the penalty for violations of Commission order provides that: [i]n construing and enforcing the provisions of this chapter relating to penalties, the act, omission, or failure of any officer, agent, or employee of any corporation, person, or public utility, acting within the scope of his official duties of employment, shall in every case be and be deemed to be the act, omission, or failure of such corporation, person, or public utility.” Section 386.570.3 RSMo (2000). Section 386.580 provides:

Every officer, agent or employee of any corporation or public utility, who violates or fails to comply with, or who procures, aids or abets any violation by any corporation, person or public utility of any provision of the constitution of this state or of this or any other law, or who fails to obey, observe or comply with any order, decision, decree, rule, direction, demand or requirement, or any part or provision thereof, of the commission, or who procures, aids or abets any corporation, person or public utility in their or its failure to obey, observe and comply with any such order, decision, decree, rule, direction, demand or

⁴ Staff’s position is that the Commission has personal jurisdiction over Respondent Gordon Burnam for the reasons set forth in this Memorandum. In the event that the Commission finds that it does not have personal jurisdiction over Respondent Gordon Burnam, Staff’s position is that if a penalty action is instituted in circuit court against Respondent Suburban Water and Sewer Co. only, the Commission can reach the personal assets of Respondent Gordon Burnam to recover the penalties assessed against Suburban Water and Sewer Co. based on the theory of recovery commonly referred to as “piercing the corporate veil.” The circuit court has subject matter jurisdiction over penalty actions pursuant to Section 386.600 and has personal jurisdiction over Respondent Gordon Burnam as a person who owns real estate in Missouri and as a person who transacts business in the state. Section 506.500, RSMo (2000). It should be noted that Staff is not attempting to obtain a double recovery of any penalties assessed against Respondents. Staff merely wants to ensure that recovery of any penalty assessed is possible against either Respondent.

⁵ The statutory references in this section are meant to be illustrative rather than exhaustive.

requirement, or any part or provision thereof, in a case in which a penalty has not herein been provided for such officer, agent or employee, is guilty of a misdemeanor and is punishable by a fine not exceeding one thousand dollars, or by imprisonment in a county jail not exceeding one year, or by both such fine and imprisonment.

It is presumed that all of the words in a statute have a purpose and that the General Assembly did not enact meaningless legislation or intend an absurd result. *Marston*, 88 S.W.3d at 537. It is presumed that “the legislature intended for its words to have substantive effect.” *Id.*

Chapter 386 clearly confers personal jurisdiction over “persons” such as Respondent Gordon Burnam. The Commission has been granted personal jurisdiction over officers, agents, and employees of public utilities or persons who are acting as public utilities. In this case, Staff has alleged that Suburban Water and Sewer Co. failed to abide by the Commission’s Report and Order in Case No. WR-2005-0455 because of the actions and inactions of Respondent Gordon Burnam as President of Suburban Water and Sewer Co. Respondent Gordon Burnam was acting in the scope of his official duties in negotiating and signing the unanimous stipulation and agreement to dispose of Case No. WR-2005-0455. As President of Suburban Water Co. and signatory to the agreement (which became a Commission order upon the Commission’s adoption of the agreement), Respondent Gordon Burnam also had the responsibility to ensure that Suburban Water and Sewer Co. abided by the terms of the agreement. Interpretation of the numerous provisions of Chapter 386 that refer to “persons” in a manner that would exclude Respondent Gordon Burnam from the personal jurisdiction of the Commission would render the statutory language in those provisions of Chapter 386 meaningless. The legislature clearly did not intend such an absurd result.

**THE COMMISSION HAS THE AUTHORITY TO ENTER THE
JUDGMENT REQUESTED BY STAFF IN THIS CASE**

The Commission has the authority to hear a complaint brought under the provisions of Section 386.390, RSMo and 4 CSR 240-2.070. If the Commission determines that penalties should be assessed, the Commission may authorize its Office of the General Counsel to bring an action in circuit court to recover the penalties. Section 386.600, RSMo (2000).

Because the Commission has the statutory authority to hear this case and to determine whether penalties are appropriate, the Commission has the authority to enter the judgment requested by Staff in this case.

CONCLUSION

The Commission has subject matter jurisdiction over Staff's Complaint and Motion for Expedited Treatment because the Complaint is based on violations of a Commission Order. The Commission also has personal jurisdiction over Respondent Gordon Burnam for the purpose of adjudicating this case. The Commission has the authority to enter the judgment requested by Staff.

Respectfully submitted,

/s/ Jennifer Heintz

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Certificate of Service

I hereby certify that copies of the foregoing have been delivered by first class mail postage prepaid or electronic mail to all counsel and parties of record this 13th day of June, 2007.

/s/ Jennifer Heintz_____