

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STAFF OF THE MISSOURI PUBLIC  
SERVICE COMMISSION**

**RESPONDENT,**

**v.**

**CONSOLIDATED PUBLIC WATER  
SUPPLY DISTRICT C-1 OF  
JEFFERSON COUNTY, MISSOURI**

**APPELLANT.**

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DOCKET NUMBER WD78507

DATE: November 17, 2015

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Appeal From:

Public Service Commission

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Appellate Judges:

Division One: Anthony Rex Gabbert, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

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Attorneys:

John D. Borgmeyer, Jefferson City, MO, for respondent.

Bianca L. Eden, Hillsboro, MO, for appellant.

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**MISSOURI APPELLATE COURT OPINION SUMMARY**

**MISSOURI COURT OF APPEALS  
WESTERN DISTRICT**

**STAFF OF THE MISSOURI PUBLIC  
SERVICE COMMISSION,**

**RESPONDENT,**

**v.**

**CONSOLIDATED PUBLIC WATER SUPPLY  
DISTRICT C-1 OF JEFFERSON COUNTY,  
MISSOURI,**

**APPELLANT.**

No. WD78507

Public Service Commission

Before Division One: Anthony Rex Gabbert, Presiding Judge, Victor C. Howard, Judge and Cynthia L. Martin, Judge

Consolidated Public Water Supply District C-1 of Jefferson County, Missouri appeals from the Public Service Commission's report and order which concluded that CPWSD and the City of Pevely violated section 247.172, RSMo, by failing to submit to the Commission for approval a written contract addressing the provision of water services, and which ordered CPWSD and Pevely to submit a territorial agreement to the Commission for approval.

**VACATE THE PUBLIC SERVICE COMMISSION'S REPORT AND ORDER.**

**Division One holds:**

(1) The Commission lacked jurisdiction and statutory authority to declare CPWSD and Pevely to be in violation of section 247.172 or to remediate that violation. The Commission only has the power granted to it by the Legislature. The Commission's powers pursuant to Chapters 386 and 393 do not extend to regulating and controlling municipalities and public water supply districts. The Commission is granted limited power over territorial agreements between municipalities, public water supply districts, and water corporations pursuant to section 247.172. However, the limited powers anticipated by section 247.172 are not implicated by this case.

(2) The action filed by the PSC Staff before the Commission was not authorized by section 247.172.9. Section 247.172.9 merely authorizes the Commission to "hold a hearing" on its own motion regarding applications, complaints, or petitions that are otherwise properly filed pursuant to other subsections of section 247.172.

(3) The action filed by the PSC Staff before the Commission was not authorized by section 386.390.1. Although section 386.390.1 allows the Commission to hear complaints filed against "any corporation . . . in violation, or claimed to be violation, of any provision of law," the term "corporation" cannot be read or construed to grant the Commission the authority to regulate the provision of water services by municipally owned utilities or public water supply districts.

(4) The Commission has made no attempt on appeal to defend the Commission's order to CPWSD and Pevely to submit "a territorial agreement" for its approval or to face other recourse by the Commission. The Commission has no authority to order competing water service providers to enter into a territorial agreement.

(5) A court, and not the Commission, must determine whether an agreement between water service providers is lawful, including determining whether an agreement is a "territorial agreement" as that term is used in section 247.172. If a territorial agreement is found to have been entered into, it is void *ab initio* if the requisite Commission approval was not secured for the agreement as a condition of its effectiveness. Section 247.172 is one of several statutory avenues through which a public water supply district can be legally divested of its right and obligation to provide water to those within the boundaries of the district.

Opinion by Cynthia L. Martin, Judge

November 17, 2015

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