

IN THE SUPREME COURT OF MISSISSIPPI

HAROLD GREEN

APPELLANT

V.

CASE NO. 2008-CC-01618

**CLEARY WATER,
SEWER AND FIRE DISTRICT**

DEFENDANTS

**APPEAL FROM THE CHANCERY COURT OF RANKIN COUNTY
CASE NO. 57,085**

BRIEF OF APPELLANT HAROLD GREEN

**APPELLANT
HAROLD GREEN
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STATEMENT OF THE CASE

On August 12, 2004, the petitioner Harold Green filed a formal complaint with the Public Service Commission petitioning the commission to vacate its order granting Cleary Water, Sewer and Fire District a Certificate of Public Convenience and Necessity. The stated reason for this action, was and is, that false statements were made to obtain this certificate. This is an appeal from the decision rendered by the Chancery Court of Rankin County Mississippi. Case No. 57,085.

STATEMENT OF THE ISSUES

(Q1) Did "Cleary make false statements to obtain a Certificate of Convenience and Necessity from the Pubic Service Commission?"

(Q2) Did the "Public Utilities Staff know "Cleary" could not and was not going to "construct, operate and maintain a sewage treatment plant in this new area?"

(Q3) Did the "Public Utilities Staff" require "Cleary" to furnish mandatory documentation proving their eligibility to receive a certificate?

(Q4) Does the "Public Utilities Staff" have the statutory authority to use their discretion in determining the eligibility of "Cleary" to obtain a certificate?"

(Q5) Did "Cleary" state, on oath, this "Centralized Sewage Treatment Plant" would be constructed "upon approval and authorization from the "Public Service Commission?"

(Q6) Did "Cleary" and the "Public Utilities Staff" make false statements to the "Public Service Commission" for "Cleary" to obtain a certificate?

(Q7) What was the "Public Service Commission" required to comply with on becoming aware that the "Public Utilities Staff" had not required "Cleary" to furnish all fifteen (15) mandatory items found in "Appendix (A) Schedule (2)" to be eligible for a certificate?

STATEMENT OF THE ISSUES

(Q8) Did the "Public Service Commission", upon recommendation from the Public Utilities Staff, issue "Cleary" a certificate to "construct, operate and maintain a "Sewer System" in the additional area?"

(Q9) Has "Cleary" constructed this "Sewer System?"

(Q10) Is the certificate issued to "Cleary" by the "Public Service Commission" specific and unambiguous in it's construction and meaning?

(Q11) Why has the "Public Service Commission" failed to comply with mandatory laws governing certificate proceeding?

(Q12) What reason does "Cleary" give for applying to the "Public Service Commission" for a certificate to construct, operate and maintain a "Sewer System"?

(Q13) Are the reasons given in the above question sufficient to warrant the action taken by the "Public Service Commission?"

(Q14) How has "Cleary Water, Sewer and Fire District" been able to act with impunity throughout these proceedings? (B) Why did the "Public Service Commission" deny the petitioners the right to amend their complaint and then dismiss the complaint?

STATEMENT OF THE FACTS

“Cleary” knew before applying for a certificate (A) they did not have the finances nor credit rating to borrow money to “construct, operate and maintain a Sewer System” in the water and fire area of the District. (B) Therefore, “Cleary was not going to construct this new Sewage Treatment Plant so as to furnish “sewer service” to the customers. Most of the exhibits listed here can be found in our brief of Feb. 4, 2008. Some may be a direct quote without an exhibit number.

(A1) “Cleary’s application:” “Application of Cleary Water, Sewer and Fire District to enlarge it’s certificated area for sewer service to make said area “identical” to its certificated area for water and fire protection.” (Exhibit - D1-2-3) This area for sewer service “Cleary” is applying to be “identical” with is a centralized sewage treatment and disposal plant constructed in 1980 for the “Private Community of Cleary Heights.” Cleary furnishes sewer service to these customers. The documentation in (Exhibits - M15-M8) also (Exhibit - Info) clearly show, one (1) year before their application for a certificate, “Cleary” could not and was not going to construct a Sewage Treatment Plant so as to furnish “sewer service” to this new area, making this documented evidence a false statement to obtain the certificate they now possess. Throughout all of these proceedings their stance has been the same, with impunity.

(A2) Item (5) of application (Exhibit - D2) states “The financial reports of “Cleary” are on file with the Commission.” We have not found these reports in the records presented.

However, we have found the financial report for the year 2000, sent to the Board of Supervisors that was subsequently published in the Rankin County News dated Jan. 18, 2001. It shows expenditures exceed revenue by \$55,167.00 for the year 2000. This trend continued from 2002 thru 2006 for a total of \$220,122.00. We have no report since 2006.

"Cleary" also states in item (5) "the expansion of the sewer service area will not jeopardize the financial well being of "Cleary". This makes two (2) false statements in item (5). (Exhibits - D2-M13-14). From these and (Exhibit - M12-pages 2-3) we get a clear picture that the "Public Utilities Staff knew "Cleary" could not and was not going to construct a new Sewage Treatment Plant, as promised and required by law. The "Public Utilities Staff duties "as described in (Rule 3) of Practice and Procedure" stated in part, "The primary function of the M.P.U.S is investigative and advisory in nature."

(A3) The "Public Utilities Staff did not require "Cleary" to comply with the following mandatory items found in "Appendix (A) - Schedule (2) of the Certificate Proceedings; Items (6-7-8-9-10-11-13-14-15) (Exhibit - Q14). "Cleary did not comply with "Rule 2 K (Exhibit - Q2) as stated in their application (Exhibit - D-2-Item-6). "Rule 2K" stated in part "Any person having a substantial interest in the subject matter of the proceeding or whose rights and liabilities may be materially affected thereby." See (Exhibit - R7) (SS Ordinance)

(A) We the property owners would have to connect to this proposed sewage treatment plant. We hereby have a substantial interest in the subject matter.

(B) Our rights to object to "Cleary's" application for a certificate to construct, operate and maintain a sewer system in our area has been purposely denied to us not being listed

as interested persons.

(C) We would be liable for material and labor cost to connect to this proposed centralized sewer system. These and other requirements are listed in "Cleary's" Sanitary Sewer Use Ordinance." (Exhibit - R7) E.P.A. estimated cost totals \$17,000 (Exhibit - M8) for each household. We would be forced by this ordinance to give these items we paid for plus the land they are on to "Cleary" who would then charge a monthly fee to be determined by "Cleary". "Cleary" now owns property on our property. We cannot sell or alter our property without "Cleary's" approval. Yes, we are truly the only persons that meet all three requirements to be listed as interested persons, though we have been denied that right, as defined by (Rule 2K) (Exhibit - Q2) and (Appendix A) (Schedule 2) (Item 13) (Exhibit - Q14).

(A4)The "Public Utilities Staff" does not have discretion in this matter. Under Rules of Practice and Procedure (Rule 3) reads in part "MPUS Duties." The primary function of the MPUS is investigative and advisory in nature. The staff of MPUS shall perform such duties as are assigned to them by the "Executive Director." The "Public Utilities Staff" duties are to examine all applications to verify that mandatory documents are included before making their recommendation of approval or disapproval to the "Public Service Commission." The "Public Utilities Staff did not require "Cleary Water, Sewer and Fire District" to include in their application the following mandatory items (6-7-8-9-10-11-13-14-15) listed in (Exhibit - Q14).

(A5) In "Cleary's application for a certificate (Exhibit - D2-Item 8) states, "The Cleary Water, Sewer and Fire District is agreeable to operating a water, sewer and fire utility system to serve the residents of the entire area, upon approval and authorization from the commission." This is a false statement made by "Cleary". (Exhibits - M8-M13-M14)

(A6) The "Public Utilities Staff" made a false statement to the "Public Service Commission" by approving "Cleary's" application and recommending the commission issue Cleary a certificate (Exhibit - F1-2-3-4) without "Cleary supplying the mandatory documents necessary to be eligible for a certificate, (Exhibit - Q14), thereby making a false statement by each party.

(A7) Incomplete Filings: "Petitioners for a certificate that fail to comply with the requirements of these rules or that do not have attached to them the supporting data will be docketed and assigned an identifying number, but the commission may decline to consider said petitioner or dismiss it, Sua Sponte, until compliance is achieved." The "Public Service Commission" has discretion only to "decline to consider said petition or dismiss it." The rest of this rule is mandatory. The P.S.C. has not complied with any part of this section (Rule 7 - F6).

(A8) On September 18, 2000, the "Public Service Commission" issued "Cleary Water, Sewer and Fire District" a "Supplemental Certificate of Public Convenience and Necessity." This certificate reads in part, "It is, therefore, ordered that: The request of

Cleary Water, Sewer and Fire District for a Supplemental Certificate of Public Convenience and Necessity to serve an additional area, is hereby granted and approved so as to authorize and permit it to construct, operate and maintain a sewer system in the additional area hereinafter described.”(Exhibit - F1-2-3-4).

(A9) “Cleary Water, Sewer and Fire District” has not constructed a “Centralized Sewer System” as applied for in their petition to the “Public Service Commission”. “Cleary” stated upon oath that they would furnish “Sewer Service” to the residents of this new area. “Cleary” knew one (1) year before application, this Sewer Service was not going to be available to these residents. (Exhibits - D1-2-3) (Exhibits - M8-13-14). These are more false statements made by “Cleary” to obtain a certificate.

(A10) Absolutely: “Specific: in that the “certificate” states no less than five (5) times these words, “Construct, operate and maintain a sewer system.” The words “Sewer Service” is stated four (4) times. The words “Sewer System” and “Sewer Services” are synonymous. The words and meaning thereof in the construction of this “certificate” are “specific” and are “unambiguous”. (Exhibit - F1-2-3-4)

(A11) The following document can be found in “Appeal Record Volume I” page 000109 and 000110. Attorneys of Record include Wm. Bruce McKinley, Esquire Attorney for the P.S.C. and James A. Bobo, Esquire Attorney for CWSFD. The record reads in part, “Be it remembered that “Cleary Water, Sewer and Fire filed its application, along with the “required exhibits” and documentation, on June 13, 2000.” This is a false statement.

Both attorneys knew "Cleary" did not supply the required exhibits and documentation to be eligible for a certificate. One of ten (10) required items is (Rule 2K). "Cleary" did not list any of its water only customers as "Interested Persons" as required by that rule. As such, we would have been "served a notice of the filing upon each," and we were not served this notice. In so doing, the "Public Service Commission" has denied the water only customers our "Civil Rights" by way of preventing a hearing whereby we could file a complaint objecting to the "Public Service Commission" issuing "Cleary Water, Sewer and Fire District a certificate to "construct operate and maintain a sewage system in this new area." All three (3) of the involved agencies knew "Cleary" could not and was not going to construct this new treatment plant. As stated, this is only one of many false statements made by "Cleary" and accepted by the "Public Utilities Staff" and the "Public Service Commission".

To get a clear picture of the difference between the required documentation in "Certificate Proceeding" (Exhibit - Q2 and Q14) and the documentation presented by "Cleary" in its application (Exhibit - D1-2-3), compare these two (2) exhibits. We freely understand our position and responsibilities as set forth in this quote, "A rebuttable presumption exists in favor of the action of an administrative agency, and the burden of proof is on the party challenging an agencies action." We respectfully submit the following. As the challenging party we believe we have shown in this and other documents evidence that proves "Cleary Water, Sewer and Fire District," the "PUS: and the "Public Service Commission" did in fact make many false statements to obtain this certificate, as alleged in our complaint (Exhibit - M4), and that the "Public Service Commission" has failed to comply with the mandatory laws governing the issuing of a

certificate. Here are two (2) of these laws.

1. "Petitioners" - Petitions to enlarge, diminish or alter the boundaries of a certificate area shall be granted upon good cause shown and shall contain or be accompanied by the data and documentation shown in "Schedule 2" of "Appendix A".

We cannot find in the records proof that "Cleary" complied with any more than six (6) of the required fifteen (15) to be eligible for a certificate. (Exhibit - Q14). On becoming aware of this short fall of nine (9) items the "Public Service Commissions" mandatory obligations is as follows.

2. "Incomplete Filings" - "Petition for certificates that fail to comply with the requirements of these rules or that do not have attached to them the required supporting data will be docketed and assigned an identifying number, but the commission may decline to consider said petition or dismiss it, Sua Sponte, until compliance is achieved." The "Public Service Commission" does have the discretion to decline to consider or dismiss, (Rule - 7). The Public Service Commission has not complied with either law.

(A12) (a) "Cleary" stated in part "The district does not want to risk expanding its sewer service into an area that is not certificated." (Exhibit - D3 - pg. 2-Line 2,3). This sounds reasonable enough.

(b) Line 7-8-9 state "Recently the District had trouble with an individual allowing "raw sewage" to run within a District water easement outside the sewer service area." Still reasonable enough except that this was not "raw sewage" or implying waste from the human bowels, but wastewater from a kitchen sink and clothes washing machine known as grey water, unacceptable but not as dangerous.

(c) Lines 9-10 state "Because of reduced Department of Health personnel within the county, a timely response could not be obtained to force the remedy of this unsanitary situation." Still reasonable enough, except that other agencies should have been notified of this "unsanitary situation." Although the "Mississippi State Department of Health" has statutory authority in this area, the "Department of Environmental Quality", "Environmental Protection Agency" and the "United States Government" can act to protect the health of the public. No record that a complaint was filed with any of these agencies.

(d) Lines 11-12-13 state "Cleary can afford and will commit to undertake construction of improvement which are necessary and economically feasible and consistent with good stewardship." This sentence is not reasonable enough due to the fact "Cleary" knew one (1) year before application they could not financially afford to, nor were they going to construct a new sewage treatment plant to furnish sewer service to this new area, thereby making a false statement and covering it when "economically feasible" and "consistent with good stewardship." (Exhibit - (1) Info). Cleary used the words "economically feasible" in (Exhibit - D2 - Item - 9) to minimize a promised statement in (Exhibit - D2 - Item - 8). Can there be any question as to the lack of integrity in these statements?

(A13) We the Petitioners respectfully submit they are not. The "Issues and Facts" in this appeal brief are focused on laws governing "Certificate Proceeding." We further respectfully submit these laws are unambiguous and are a mandatory requirement before an applicant is eligible for a certificate. We do further respectfully submit these laws are

not subject to dismissal at the discretion of the "Public Service Commission" or any other agency. These laws were made to protect the public from unscrupulous applicants who would use a certificate to force their will upon the innocent.

(A14) (a) The answer to question no. 14 can be answered by this statement made by "Cleary" which reads in part, "When contacted about the District's plans in relation to the expansion of the area certificated for wastewater services, the District Manager, Kenn Munn, explained the decentralized wastewater program to the personnel of the "Public Utilities Staff." At no time did the District or its personnel mislead the Commission or the M.P.U.S. in any way. (Exhibit - M12 - pg. 2-3). A further statement by the "Public Service Commission" stated in part, "Be it remembered that Cleary Water, Sewer and Fire District filed its application, along with the required exhibits and documentation on June 13, 2000." Attorneys of record as being "James A. Bobo, Esquire" (Attorney for CWSFD). "Wm Bruce McKinley, Esquire" (Attorney for the MPSC. (Volume I - pg. 000109-110) in the appeal record. All of the above agencies plus the two attorneys knew that required documentation to be eligible for a certificate had not been met by "Cleary" and that "Cleary" had no intention of "constructing, operating and maintaining" a sewer system in the additional area. Unconcerned for the rights of the people of the district, best describes the action taken by the "Public Service Commission" in issuing "Cleary Water, Sewer and Fire District" a certificate to "construct, operate and maintain a sewer system" in this new area. Knowing absolutely (a) That CWSFD had not furnished required documents to be eligible for a certificate. (b) The PSC did in fact issue CWSFD a certificate with impunity. (c) The PSC has not complied with laws pertaining to

incomplete filings (Rule 7 - F6) nor has the PSC acted to force CWSFD to comply with the order of the certificate which is to construct, operate and maintain a sewer system in this new area or revoke the certificate. The reason given for action not taken by the PSC is it's not in the best "public interest". We are the "public" and hereby state that the action not taken by the PSC is not in the best interest of the public but rather in the best interest of the Public Service Commission which in this case has failed miserably to support our rights under the Constitution.

CONCLUSION

We the petitioners respectfully submit the following.

The year 1990 was the last year the U.S. Census Bureau did a survey on the number of “Individual Onsite Wastewater Disposal Systems” in the State of Mississippi. That number was (425,239) housing units. The number of people served by these 10WDS was (910,574). Most of these homes are supplied “Potable Water” from (1367) “Public Water Suppliers”, including “Cleary, Water and Sewer Fire District. All (3) parties will be affected by the decision of this court, none more so than these home owners.

These “Public Water Suppliers” will surely follow CWSFD’s lead by taking ownership of the 10WDS in their district. The home owners will not be able to sell their homes or very little else, without the “Water Suppliers” permission. Plus, the homeowner will be charged a fee, determined by permission and a fee determined by the “Water Suppliers” to use the 10WDS. The only cost to the “Water Suppliers:” is for them to apply for a certificate, no matter what it’s stated purpose is, pass an ordinance declaring ownership of the 10WDS. Presto, they have a ready made source of income, without strings attached.

The following are only some of the adverse effects the “Trial Courts” decision has upon the lives of these Mississippians in the leading up to and including the issuing purpose of a certificate to the CWSFD and to what purpose they are using this certificate.

On August 12, 2004, we filed a formal complaint with the "Public Service Commission", which is quote "complaint to vacate order granting supplemental Certificate of Public Convenience and Necessity." In this complaint we stated false statements were made to obtain that certificate, which is specific and is unambiguous in its purpose, that being to "construct, operate and maintain a Sewer System in a specified area of Rankin County." We presented only one of these false statements in this complaint. That being, CWSFD had not constructed this ordered sewer system 48 months after receiving this certificate. In fact, some 96 months later they still have not complied with this order. We have presented documented evidence to the PSC and the "Trial Court" proving Cleary has made many false statements to obtain the certificate they hold.

The Public Service Commission dismissed our complaint on April 5, 2005 without addressing the documented evidence presented. The Chancery Court likewise failed to address this evidence and did affirm the PSC dismissal of our complaint.

We respectfully submit the following.

- (a) Both the "Public Service Commission" and the Trial Court base their decisions on laws pertaining to a legally obtained certificate.
- (b) Our complaint was and is, that the "Cleary Water, Sewer and Fire District" illegally obtained a certificate by making false statements in its application to the PSC for a certificate.
- (c) These laws are found in "Certificate Proceedings" and clearly define one from the other.

(d) The application laws require 16 items of information accompany the application to be eligible for a certificate.

(e) The CWSFD did not furnish 10 of these items in their application.

(f) One of the 10 required items was "Rule 2K". This item was listed in CWSFD's application. However, this item did not list the "homeowners" in the "Water and Fire District" as "Interested Persons." In so doing, the CWSFD and the PSC denied these "homeowners" their "Civil Rights" to participate in the "Certificate Proceedings." The other required 9 items to be eligible for a certificate are found in "Appendix A" "Schedule 2" and are thus.

Items (6) a general description of new facilities.

(7) an itemized estimate of cost to the utility of all new investment.

(8) a listing of all sources of funding.

(9) an estimate of the impact of the cost of facilities upon base and rates.

(10) the number of assured and prospective customers in (a) the new area; and

(b) existing certificated area.

(11) a complete set of engineering plans and specifications.

(13) an exhibit listing the names and addresses of all interested person as defined in Rule 2K of the Commissioner's Rules of Practice and Procedure together with a certificate that the filing utility has served a notice of the filing upon each.

(14) a copy of all testimonies to be relied upon at hearing.

(15) a copy of the current balance sheet and income statement.

(g) These laws are mandatory as to what course of action the PSC is to take concerning

“Incomplete Filings.”

(h) The PSC issued CWSFD a certificate without requiring the above 10 mandatory items.

(I) The PSC has no discretionary authority to issue a certificate without all of the required items.

(j) These laws were made to prevent the very thing that has happened from happening.

(k) In this instance, the PSC has completely failed to guard the “Public Interest.”

(l) The Shepherds left the gate unattended; Wolves will surely devour the Sheep.

(1) We respectfully submit that we the petitioners have presented evidence, through documents and sworn affidavit, proof that CWSFD did indeed make many false statements to obtain a certificate and that the PSC did assist them by not requiring all necessary items to be eligible for a certificate.

(2) We respectfully submit the governing authority as to what procedure the PSC is following in “Incomplete Filings” (Rule 7 - F6) Quote “Petitions for certificates that fail to comply with the requirements of these rules or that do not have attached to them the required supporting data will be docketed and assigned an identifying number, but the Commission may decline to consider said petition or dismiss it , Sua Sponte, until compliance is achieved.

(3) We respectfully submit the governing authority to issue a certificate that is found in (Rule 2 K3) and (Appendix A, Schedule 2) (Exhibits - Q2 - Q14). As stated, CWSDF did not meet these requirements nor did the PSC require them to do so before issuing the certificate.

(4) We respectfully submit both the CWSFD and PSC denied our rights to be listed as interested persons, as the law requires.

(a) In doing so, we were unable to participate in the Certificate Proceeding

(b) We were denied standing, thereby

(c) The PSC dismissed our complaint

(5) We respectfully submit we do have standing, by property owners automatically being liable for any and all things concerning that property.

(6) CWSFD stated reason for applying for a certificate was to get permission from the PSC to construct, operate and maintain a centralized sewage treatment plant in our area so as to furnish sewer service to be identical to Cleary Heights sewer service. It's not unreasonable to state this plant plus connecting to this new system will cost these property owners money and property damage. To say we have no standing to take the action we have taken because we did not list in our complaint some incurring, lost damage, harmed or threat of injury, or harm to which we would suffer. This is arbitrary and is not consistent with the laws governing Certificate Proceeding.

(7) We respectfully submit the governing laws that the CWSFD, PSC and the Trial Court used in the actions they have taken against the homeowners of this water district are not applicable in these proceedings. Those laws are used only when an applicant has complied with all requirements necessary to be eligible for a certificate. CWSFD has not met those requirements nor has the PSC required them to do so, thereby making this contested certificate illegally obtained and those laws used in defense of their actions null and void.

(8) We the Petitioners respectfully submit from the evidence presented, the certificate granted by the PSC to CWSFD was unlawfully obtained as stated in our complaint. In the "Public Interest" and for the substantial rights of (910,574) Mississippians who use individual onsite wastewater disposal systems, we respectfully ask this "Honorable Court" to weigh the evidence and to please disregard the lack of professionalism in its presentation.

RESPECTFULLY SUBMITTED, this the 26 day of January 2009

By Harold L. Green and 160 Petitioners

CERTIFICATE OF SERVICE

I, Harold Green, Petitioners/Appellant, do certify that I have on this day sent 1st class mail
a prepaid copy of the Brief of Appellant, to the following counsel of record:

James A. Bobo, Esq.
Attorney for Cleary Water
Sewer and Fire District
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Brandon, MS 39043

Lynn Carlisle, Esq.
Attorney For The Public
Service Commission
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Jackson, MS 39215

This the 26 day of January 2009

Respectfully submitted by 160 Petitioners

Harold L. Green

CERTIFICATE OF SERVICE

I, Harold Green, Petitioners/Appellant, do certify that I have on this day sent 1st class mail
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