

Wuetcher



COMMONWEALTH OF KENTUCKY
PUBLIC SERVICE COMMISSION
730 SCHENKEL LANE
POST OFFICE BOX 615
FRANKFORT, KY. 40602
(502) 564-3940

RECEIVED

APR 08 1993

GENERAL COUNSEL

April 1, 1993

Mr. D. Michael Holbrook
WaterMaster of Southwestern Ohio, Inc.
2702 Erie Avenue
Cincinnati, Ohio 45208

Dear Mr. Holbrook:

The Commission is in receipt of your letter of March 19, 1993 in which you requested an opinion about the applicability of Commission regulations to your business operations.

The Commission understands the facts to be as follows: WaterMaster provides monthly reading and billing service to the owners of shopping centers, apartment buildings and mobile home parks. These owners have installed submeters to measure and record their tenants' water usage. Under WasteMaster's current operating procedures, sub-metered tenants pay no more than individual customers of local water utilities and owners are not permitted to realize any profit from sub-metered tenants.

Your letter poses two issues: (1) Does the Commission have jurisdiction over WaterMaster's proposed operations? (2) Does any Commission or utility regulation prohibit WaterMaster's proposed operations?

As to the first issue, KRS 278.040 provides that the "jurisdiction of the [C]ommission shall extend to all utilities in this state." KRS 278.010(3)(f) defines a utility as

any person except a city, who owns, controls or operates or manages any facility used or to be used for or in connection with. . .[t]he diverting, developing, pumping, impounding, distributing or furnishing of water to or for the public, for compensation

Mr. D. Michael Holbrook
April 1, 1993
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WaterMaster's proposed operations do not fall within this definition as it does not manage or operate any facilities which provide service to "the public."

"One offers service to the 'public' . . . when he holds himself out as willing to serve all who apply up to the capacity of his facilities. It is immaterial . . . that his service is limited to a specified area and his facilities are limited in capacity." North Carolina ex. rel. Utilities Comm'n v. Carolina Tel. & Tel. Co., 148 S.E.2d 100, 109 (N.C. 1966). If utility service is limited to a specific class of persons, however, that service is not to the public. Utility service provided by a landlord to his tenants is considered as service to a specific class and does not, therefore, make the landlord a utility subject to Commission regulation. See Drexelbrook Associates v. Pennsylvania Pub. Util. Comm'n, 212 A.2d 237 (Pa. 1965); City of Sun Prairie v. Wisconsin Pub. Serv. Comm'n, 154 N.W.2d 360 (Wis. 1967); Pub. Serv. Comm'n of Maryland v. Howard Research & Development Corp., 314 A.2d 682 (Md. 1974).

As to the second issue, Commission regulations do not prohibit the resale of water. Based upon a review of their filed tariffs, none of the jurisdictional water utilities in northern Kentucky apparently prohibit your proposed operations. You, however, should consult directly with those utilities about their rules and regulations.

If you have any questions on this matter, please contact Gerald Wuetcher of the Commission's Office of General Counsel at (502) 564-3940, Extension 255.

Sincerely,



Don Mills
Executive Director

mdk

WaterMaster

of Southwestern Ohio, Inc.

March 19, 1993

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Mr. Don Mills
Executive Director
Public Service Commission
730 Schenkel Lane
Frankfort, Kentucky 40601

MAR 23 1993

PUBLIC SERVICE
COMMISSION

Dear Mr. Mills,

My purpose in writing is to introduce our company to you, explain what we do and request your comments regarding whether or not our business activity conflicts with any State utility rules and/or regulations.

We are an independent franchisee of a water sub-metering company established in 1983 in Columbus, Ohio. In addition to the offices in Cincinnati and Columbus, we have locations in Cleveland, Ohio, Washington, D.C. and Florida. Currently, in Southwestern Ohio, we are servicing shopping centers, apartment buildings as well as mobile home parks.

Our program consists of three phases. In the first phase, the property owner installs an individual water meter in each unit of his apartment building, shopping center, etc. The individual sub-meters are, of course, installed after the municipal master meter and do not in any way interfere with or alter the delivery of water/sewer services provided to the tenant/user by the municipality. Nor does the installation relieve the owner of the responsibility for payment of water/sewer charges to the municipal water department. The individual sub-meters simply enable the property owner to monitor unit usage and identify and control specific water maintenance problems that would otherwise remain undetected.

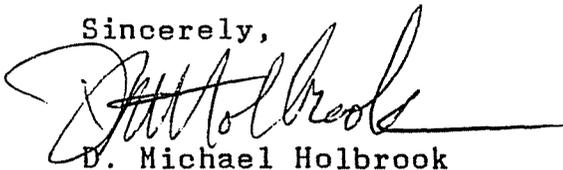
Phase II of the program consists of the monthly reading and billing service which we provide. This enables the property owner to recover his water/sewer costs from individual residents based on actual usage. Our billing practices are based on the current municipal water and sewer rates in effect in the area in which the property is located. In addition, our billing procedures include the following regulations:

1. Sub-metered tenants will pay no more than they would pay as individual customers of the local water utility.
2. Owners cannot realize any profit whatsoever from the recovery of water/sewer expenses paid by sub-metered tenants.

Phase III involves working with the water/sewer consumers who have been metered as well as the owners, operators and managers of the properties involved to ensure that the intent and mechanics of the system are clearly understood. On an on-going basis, we respond to customer questions regarding rates and usage and make every effort to have the entire process function as smoothly as possible.

We are anxious to begin offering our program to potential customers in the Northern Kentucky area. We look forward to your comments regarding our business and hope to hear from you in the near future. Your cooperation is much appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "D. Michael Holbrook", with a long horizontal line extending to the right.

D. Michael Holbrook

WATERMASTER OF SOUTHWESTERN OHIO, INC.