

No. 30672 - State of West Virginia ex rel. The Public Service Commission of
West Virginia v. Town of Fayetteville, Municipal Water Works

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RORY L. PERRY II, CLERK
SUPREME COURT OF APPEALS
OF WEST VIRGINIA

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Davis, C.J., dissenting:

In this proceeding, the Court was asked to determine whether the Public Service Commission (hereinafter referred to as the “PSC”) had jurisdiction to require the Town of Fayetteville (hereinafter referred to as the “Town”) to refund a sewer reconnection fee to a customer, Michael Neff. This Court was also asked to invalidate part of an ordinance holding landlords liable for delinquent water and sewer fees. The majority opinion concluded that the PSC had jurisdiction of the matter and awarded a writ of mandamus. For the reasons set out below, I dissent.

PSC’s Jurisdiction over Municipalities is Statutorily Limited

The majority opinion in this case does an admirable job in quoting and analyzing various statutes that support its conclusion. However, the majority opinion fails to discuss and analyze the actual statutory provision which controls the PSC’s jurisdiction over municipalities operating utilities: W. Va. Code § 24-2-4b(c) (1994) (Repl. Vol. 2001). This provision states:

The commission shall review and approve or modify such rates upon the filing of a petition within thirty days of the adoption of the ordinance or resolution changing said rates or charges by:

(1) Any customer aggrieved by the changed rates or charges who presents to the commission a petition signed by not less than twenty-five percent of the customers served by such municipally operated public utility, or twenty-five percent of the membership of the electric, natural gas or telephone cooperative residing within the state; or

(2) Any customer who is served by a municipally operated public utility and who resides outside the corporate limits and who is affected by the change in said rates or charges and who presents to the commission a petition alleging discrimination between customers within and without the municipal boundaries. Said petition shall be accompanied by evidence of discrimination; or

(3) Any customer or group of customers who are affected by said change in rates who reside within the municipal boundaries and who present a petition to the commission alleging discrimination between said customer or group of customers and other customers of the municipal utility. Said petition shall be accompanied by evidence of discrimination.

W. Va. Code § 24-2-4b(c).

As is readily apparent, West Virginia Code § 24-2-4b(c) “provides for a very limited set of circumstances by which a petition may be filed. Further, it provides for a specific set of entities who may protest municipal operated utility rates.” *City of South Charleston v. Public Serv. Comm’n*, 204 W. Va. 566, 573, 514 S.E.2d 622, 629 (1999) (per curiam). Under the express language of the relevant statute, the PSC’s authority over municipalities and their utility services may be initiated under only three limited situations: (1) a customer who presents a petition signed by not less than 25% of the customers served by such municipally operated public utility; (2) a customer who resides outside the corporate

limits who alleges discrimination between customers within and without the municipal boundaries; or (3) a customer who resides within the municipal boundaries who alleges discrimination between him/her and other customers of the municipal utility. *See City of Benwood v. Public Serv. Comm’n*, 165 W. Va. 700, 271 S.E.2d 342 (1980) (per curiam) (finding that the PSC did not have statutory jurisdiction). This Court has previously recognized that “unless the conditions set forth in W. Va. Code § 24-2-4b(c) [1994], are met, the Commission is without jurisdiction to consider rate increases by municipally owned public utilities.” *City of Wheeling v. Public Serv. Comm’n*, 199 W. Va. 252, 257, 483 S.E.2d 835, 840 (1997) (per curiam). *See also City of South Charleston v. Public Serv. Comm’n*, 204 W. Va. at 574, 514 S.E.2d at 630 (recognizing a petition must be filed under W. Va. Code § 24-2-4b(c) before the PSC can acquire jurisdiction).

The record in this case is uncontroverted and quite clear. When Mr. Neff sought to have the PSC intervene in his case, he failed to satisfy any of the three jurisdictional prerequisites of W. Va. Code § 24-2-4b(c). Thus, the PSC had no jurisdiction to invalidate a part of the Town’s ordinance or to require the Town to provide a refund to Mr. Neff.¹

¹Mr. Neff did not challenge the ordinance as it pertained to the obligation of landlords to pay delinquent tenant’s fees. The PSC *sua sponte* addressed this issue after Mr. Neff filed his petition seeking a refund. Had Mr. Neff’s petition met any of the requirements for filing a petition under W. Va. Code § 24-2-4b(c), our cases would permit the PSC to *sua sponte* address other issues under an ordinance not addressed by the petitioning party. *See, e.g., City of South Charleston v. Public Serv. Comm’n*, 204 W. Va. 566, 574, 514 S.E.2d 622, 630 (1999) (holding that once the PSC’s jurisdiction is properly invoked, it “may, pursuant to W. Va. Code § 24-2-3 [1986], originate, establish or change ‘existing rates’ that the

Nevertheless, the majority opinion purports to grant the PSC this new jurisdictional authority by applying language from W. Va. Code § 24-2-4b(b), which provides that “[a]ll rates and charges set by . . . municipally operated public utilities . . . shall be just, reasonable, applied without unjust discrimination or preference and based primarily on the costs of providing these services.” Explaining its reasoning, the majority opinion contends that this language grants the PSC “general powers to require reasonable, non-discriminatory practices based primarily upon the cost of services.” Unfortunately, this point is irrelevant. W. Va. Code § 24-2-4b(b) sets out the *general* powers of the PSC but says nothing about invoking the PSC’s jurisdiction to exercise those general powers. The issue of invoking the PSC’s jurisdiction is contained solely in W. Va. Code § 24-2-4b(c) and is limited to those three circumstances previously identified. Moreover, it is contrary to rudimentary principles of statutory construction to permit a statutory provision dealing with an agency’s general authority to act as the basis for exercising that authority, particularly when there is a specific statutory provision dealing with the circumstances in which that authority may be invoked. *See* Syl. pt. 1, in part, *UMWA by Trumka v. Kingdon*, 174 W. Va. 330, 325 S.E.2d 120 (1984) (“The general rule of statutory construction requires that a specific statute be given precedence over a general statute[.]”). Consequently, W. Va. Code § 24-2-4b(b) cannot be relied upon as authority for invoking the PSC’s jurisdiction.

Commission finds to be unjust or discriminatory”). In the instant proceeding, Mr. Neff did not properly initiate the PSC’s jurisdiction. Therefore, the PSC could not *sua sponte* address the ordinance’s provision pertaining to landlords having to pay their tenants’ delinquent fees.

Under the majority opinion, the PSC now has jurisdiction to alter any municipal ordinance addressing public utilities, based upon any general and nonstatutory-based complaint filed by a single customer. The majority's decision is contrary to W. Va. Code § 24-2-4b(c) and is wrong. Clearly, the Legislature limited the circumstances by which individuals may challenge utility rates or charges by a municipality.² Therefore, the writ of mandamus should have been denied.

For the reasons set out above, I dissent.

²The PSC will now be inundated with petitions that do not satisfy the statutory requirements of W. Va. Code § 24-2-4b(c), and will attempt to decline jurisdiction therein. When the PSC declines jurisdiction, this Court will then be flooded with appeals arguing that, pursuant to the majority opinion in this case, the PSC cannot limit its jurisdiction to petitions filed under W. Va. Code § 24-2-4b(c). Unfortunately, those arguments will be correct because the majority opinion countenances such a result.