

**Virginia State Corporation Commission
eFiling CASE Document Cover Sheet**

Case Number (if already assigned) clk-2009-00012

Case Name (if known)

Document Type LMEM

Document Description Summary Memorandum of Law in Support of Motion for Summary Judgement to deem certificate of authority void ab initio and for injunctive relief.

Total Number of Pages 5

Submission ID 1045

eFiling Date Stamp 6/29/2009 8:16:16AM

VIRGINIA:

BEFORE THE STATE CORPORATION COMMISSION
At Richmond, June 29, 2009

DOUGLAS ROBERT JOHNSON
Petitioner,

v.

Case No.: CLK-2009-00012

FLUVANNA COUNTY BOARD OF SUPERVISORS,
LOUISA COUNTY BOARD OF SUPERVISORS,
and
JAMES RIVER WATER AUTHORITY,
Respondents.

MEMORANDUM OF LAW IN SUPPORT OF MOTION FOR SUMMARY JUDGEMENT

COMES NOW your Petitioner, Douglas Robert Johnson, in support of its Motion for Summary Judgement to deem certificate of authority void *ab initio* and for injunctive relief, respectfully says as follows:

STATEMENT OF THE CASE

1. Petitioner filed with the State Corporation Commission.
2. The Commission issued a Scheduling Order.
3. The Respondents responded and included a Motion to Dismiss.
4. The Commission ruled requiring response to Motion to Dismiss.
5. Petitioner responded.
6. Ten days expired without Respondent filing further.
7. Petitioner is now filing Motion for Summary Judgement.

STATEMENT OF THE FACTS

1. While there are "facts" claimed by both sides, there are sufficient facts not in dispute to grant this Motion for Summary

Judgement.

2. The dispute is about the merits of the case, namely: "Did the Fluvanna Board of Supervisors improperly disregard the citizen petition calling for a referendum?"

3. It is an agreed fact that a citizen petition calling for a referendum was filed with the Respondent Fluvanna County Board of Supervisors at its Public Hearing on March 18, 2009.

4. The Respondent Fluvanna Board of Supervisors rejected the citizen petition.

5. The Respondent Fluvanna Board of Supervisors decided to form the Joint Water authority on April 15, 2009.

6. The Respondent Fluvanna Board of Supervisors was notified on April 16, 2009, of an Order of the Fluvanna Circuit Court scheduling a hearing on May 15, 2009 to consider, among other items, whether an injunction should be granted that would, "In the meantime the Fluvanna County Board of Supervisors shall take no further action to form a joint Water Authority."

7. The Respondent Fluvanna Board of Supervisors was notified of a separate action in the Fluvanna Circuit Court by fax on April 20, 2009.

8. The Respondent Fluvanna Board of Supervisors applied to the Commission for the certificate or charter of Respondent James River Water Authority on April 21, 2009.

ARGUMENT

1. **Commission did not have jurisdiction to act on April 21, 2009.**

The orderly admission of justice demands that two courts do not have the jurisdiction over the same parties and matter at the same time. See Allison's Executor v. Wood, 104 Va. 765, 767-768 (1906). The purpose of this rule is to prevent possible confusion which could result from allowing multiple courts jurisdiction over the same matter at the same time.

2. **Commission cannot have Concurrent Jurisdiction with the Circuit Court.**

Respondent Fluvanna Board of Supervisors demonstrated the interdependency of the respective Jurisdictions when with its filing of April 23, 2009 with the Fluvanna Circuit Court which asserted that the Circuit Court action must be dismissed because of the action of the Commission.

3. **Any attack on the actions of the Fluvanna Board of Supervisors should be in Circuit Court.**

Respondent James River Water Authority said that "the place for challenge to the Board's action was immediate review in the Circuit Court" [page 10 of James River Water Authority Memorandum in Support of Motion to Dismiss filed June 1, 2009]

4. **Supreme Court would need a record to rule on Merits.**

The timeliness of the actions challenging the actions of Respondent Fluvanna Board of Supervisors cannot be disputed.

Action was started even before respondent Louisa Board of Supervisors voted to form the Water Authority on the evening of April 20, 2009.

Furthermore challenges of Commission actions to the Supreme Court are by right and thus must be heard.

The only reasonable possible ruling of the Supreme Court would be to remand it back to the Court from which it was appealed to, the Commission.


CONCLUSION

The only option for the Commission is to hear the Merits of the case, a course of action rejected by the Respondents, or to grant the Motion for Summary Judgement.

Wherefore this Petitioner, Douglas Johnson, prays the Commission grant the Motion for Summary Judgement to deem the certificate of authority void ab initio and for injunctive relief.

Respectfully submitted,

DATED: June 29, 2009



Douglas R. Johnson, Pro se

DOUGLAS R. JOHNSON, PRO SE
571 Long Acre Road
Palmyra, VA 22963
(434) 286-6984 fax (206) 600-6984
pro se

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the Memorandum in Support of the Motion for Summary Judgement, concerning petition to deem certificate of authority void *ab initio* and for injunctive relief, was mailed the 29th day of June, 2009, to:

DEFENDANT FLUVANNA COUNTY BOARD OF SUPERVISORS at:

Frederick W. Payne, Esquire
Fluvanna County Attorney
414 East Jefferson Street
Charlottesville, VA 22902

and


DEFENDANT LOUISA COUNTY BOARD OF SUPERVISORS at:

Gregory Hoffmann, Esquire
County Attorney for Louisa County
PO Box 160
1 Woolfolk Avenue
Louisa, VA 23093

and

DEFENDANT JAMES RIVER WATER AUTHORITY at:

Robert L. Hodges, Esquire
McGuire Woods
James River Water Authority
One James Center
901 East Cary St.
Richmond, VA 23219-4030



Douglas R. Johnson, Pro se

DOUGLAS R. JOHNSON, PRO SE
571 Long Acre Road
Palmyra, VA 22963
(434) 286-6984 fax (206) 600-6984
pro se