

BRANSTETTER, STRANCH & JENNINGS, PLLC

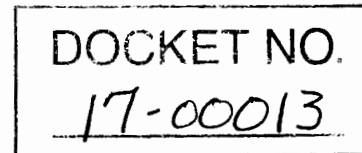
THE FREEDOM CENTER
223 ROSA L. PARKS AVENUE
SUITE 200
NASHVILLE, TENNESSEE 37203
TELEPHONE (615) 254-8801
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CECIL D. BRANSTETTER, SR., 1920-2014
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BEN GASTEL *
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JOE P. LENISKI, JR.
DONALD L. SCHOLLES
MIKE STEWART
JAMES G. STRANCH, III
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MICHAEL J. WALL

RECEIVED
2017 FEB -8 AM 8:04
T.R.A. DOCKET 17-00013
ASSOCIATES:
GABRIEL G. GALLETTI ***
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OF COUNSEL:
ROBERT E. RICHARDSON, JR. **

January 26, 2017

Chairman David Jones
Tennessee Regulatory Authority
502 Deaderick Street
Nashville, TN 37243



Re: Complaint Against John Powell

Dear Chairman Jones:

I work with Milcrofton Utility District which provides water service within its service area in the southeastern part of Williamson County. As a utility district Milcrofton has the exclusive right to provide water service within its service area.

Milcrofton has provided water service for several years to a subdivision in Williamson County named King's Chapel Subdivision. The developer of the King's Chapel Subdivision is Ashby Communities, LLC. John Powell is the Manager of Ashby Communities. Mr. Powell is the owner and Manager of Kings' Chapel Capacity, LLC. King's Chapel Capacity, LLC has a certificate from the Tennessee Regulatory Authority (TRA) to provide sewer service within the King's Chapel Subdivision.

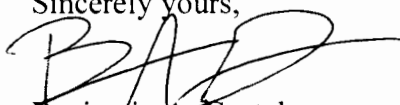
In 2015 Mr. Powell asked for permission from Milcrofton to build water lines from a well in the subdivision to distribute water to lot owners to be used for irrigation. Mr. Powell intended to and has in fact charged lot owners a fee for connecting them to a water system within the subdivision. Milcrofton does not know how many homes have connected to this irrigation system, but suspects several houses are connected. Milcrofton denied Mr. Powell's request. I have enclosed a copy of the letter dated July 28, 2015 sent to Mr. Powell from Donald Scholes in my office in which he informed Mr. Powell Milcrofton was not willing to allow him to connect homeowners to a water system to be used for irrigation. The reasons Milcrofton denied this request are set forth in this letter. The primary reason Milcrofton denied Mr. Powell's request is because Milcrofton has the exclusive right to provide water service within its service area under T.C.A. § 7-82-301(a). Despite denying Mr. Powell permission to connect homeowners to a public water irrigation system, he has proceeded to do so.

Chairman David Jones
January 26, 2017
Page 2

Mr. Powell is offering to provide water from a well to the general public in the King's Chapel Subdivision for a fee. As such this water system is affected by and dedicated to public use and is a public utility under T.C.A. § 65-4-101. Neither Mr. Powell nor any company which he owns has obtained a certificate of public convenience and necessity to operate this public water system in violation of T.C.A. § 65-4-201. The fee he is charging for this service has not been approved by the TRA or any regulatory body.

On behalf of Milcrofton Utility District, I request that the TRA investigate the operation of this water system. If Mr. Powell is providing water for irrigation to the members of the public living in the King's Chapel Subdivision and charging a fee to connect to the system or for water used, then Milcrofton requests that Mr. Powell be informed to cease operating this water system until he has obtained the requisite certificate to operate the system. Milcrofton further request that the TRA take any other enforcement action necessary to require Mr. Powell to cease the operation of this water system for the benefit of the public.

If I or the representatives of Milcrofton Utility District can provide further information to you to assist in your investigation, please let me know.

Sincerely yours,

Benjamin A. Gastel

Enclosure
c: Mike Jones

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OF COUNSEL:
ROBERT E. RICHARDSON, JR. **

July 28, 2015

* ALSO ADMITTED IN GA
** ONLY ADMITTED IN OH

Via email and first class mail

John Powell
Ashby Communities, LLC
4980 Meadowbridge Blvd.
Arrington, TN 37014

Re: Milcrofton Utility District – Providing Water for Irrigation within King's Chapel
Subdivision

Dear John:

You recently asked Mike Jones, General Manager of Milcrofton Utility District, whether Ashby Communities, LLC could distribute water from a well on its property to lots within the King's Chapel Subdivision to use for irrigation. The District cannot give Ashby Communities, LLC, the King's Chapel Homeowners Association or you consent to build water lines from a well in the Subdivision to distribute to lot owners to be used for irrigation.

The District sells a substantial amount of water within its service area which is used for residential and commercial irrigation. The District cannot allow any person to sell or distribute water to the public to be used for irrigation. Under T.C.A. § 7-82-301(a), the District has the exclusive right to provide water service within its boundaries. Permitting a person to distribute water for irrigation to the public by a private pipeline system would encroach upon the District's exclusive right to provide water service within its boundaries. It would place such person in direct competition with the District and could adversely affect its revenues. In addition, the District has issued bonds with bond covenants which contractually obligate the District to operate its water system in conformity with these bond covenants. One bond covenant provides:

The District will not construct, finance or grant a franchise for the development
or
operation of facilities that compete for service with the services to be provided
by the System or consent to the provision of any such services in the area
currently served by the District by any other public or private entity and will
take all steps necessary and proper, including appropriate legal action to prevent
any such entity from providing such service.

John Powell
July 28, 2015
Page 2

Therefore, the District cannot grant permission for anyone to distribute water to the public within its service area without violating this bond covenant.

If I can provide further information on this question, please feel free to contact me.

Sincerely yours,

A handwritten signature in dark ink, appearing to read "Donald L. Scholes". The signature is written in a cursive style with a large initial "D".

DONALD L. SCHOLES

c: Mike Jones