

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

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|--|---|-------------------------|
| City of Alliance, |) | |
| |) | |
| Complainant, |) | |
| |) | |
| v. |) | Case No. 13-2107-TP-CSS |
| |) | |
| The Ohio Bell Telephone Company d/b/a AT&T Ohio, |) | |
| |) | |
| Respondent. |) | |

AT&T OHIO'S MOTION TO DISMISS

AT&T Ohio, by its attorney and pursuant to Section 4901:1-12 of the Commission's rules, moves to dismiss the captioned Complaint for the reason that it was filed on behalf of a corporation that is not properly represented by an attorney-at-law admitted to the practice of law in the State of Ohio. A memorandum in support of this motion is attached.

Respectfully submitted,

AT&T Ohio

By: /s/ Jon F. Kelly

Jon F. Kelly
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150 E. Gay St., Room 4-A
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Its Attorney

MEMORANDUM IN SUPPORT

A Commission rule specifies that, in practice before the Commission, “[c]orporations must be represented by an attorney-at-law.” Ohio Admin. Code § 4901-1-08(A). The City of Alliance is a municipal corporation under Ohio law, and a municipal corporation is a “body politic and corporate.” R. C. § 715.01. The Commission may not permit a corporation to institute a formal complaint unless an attorney-at-law admitted to practice in the State of Ohio represents the corporation. The Commission has had a practice in recent years of permitting corporations to file such complaints, and to permit non-attorney officers or employees of the corporations to pursue the complaints through the prehearing settlement phase. The established legal precedents, however, demonstrate that this practice is in violation of Ohio law. The Commission may not accept, and certainly should not process, any formal complaint brought by a corporation that is not represented by a qualified attorney-at-law.

In this case, the City Auditor has usurped the power of the Director of Law by filing the complaint. R. C. § 733.53 provides in pertinent part as follows:

The city director of law, when required to do so by resolution of the legislative authority of the city, shall prosecute or defend on behalf of the city, all complaints, suits, and controversies in which the city is a party, and such other suits, matters, and controversies as he is, by resolution or ordinance, directed to prosecute.

R. C. § 733.53.

It is the law of Ohio that a corporate body cannot act through its corporate officers rather than through an attorney-at-law to maintain litigation on the corporation's behalf. Union Savings Assn. v. Home Owners Aid, Inc. (1970), 23 Ohio St.2d 60. In Sharon Village Ltd. v. Licking Cty. Bd. of Revision (1997), 78 Ohio St.3d 479, the Ohio Supreme Court held that "[t]he preparation and filing of a complaint with a board of revision on behalf of a taxpayer constitute the practice of law." Thus, an attorney, or the owner of the property, must prepare and file the complaint. In the Union Savings case, the court observed that "[a] corporation is an artificial person, created by the General Assembly and deriving its power, authority and capacity from the statutes." The Court held that "[a] corporation cannot maintain litigation in propria persona, or appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law." Id. at syllabus I. The practice of law has generally been defined as encompassing three types of activities: "(1) legal advice and instructions to clients advising them of their rights and obligations; (2) preparation of documents for clients, which requires legal knowledge not possessed by an ordinary layman; and (3) appearing for clients in public tribunals and assisting in the interpretation and enforcement of law, where such tribunals have the power and authority to determine rights of life, liberty, and property according to law." Mahoning Cty. Bar Assn. v. The Senior Serv.Group, Inc. (Bd. Commrs. Unauth. Prac.1994), 66 Ohio Misc.2d 48, 52. The filing of a formal complaint with the Commission pursuant to R. C. §§ 4905.26 or 4927.21 clearly fits the third category of activities described in that case. The Commission, as a public tribunal, has the right to determine the rights and responsibilities of public utilities *vis á vis* their customers in the formal complaint process. It is for that reason that the filing of a formal complaint before the Commission by a corporation may only be undertaken by an attorney-at-law.

The Supreme Court of Ohio has confirmed and expanded upon these precedents and has repeating its holding in the Sharon Village case that "[a] corporation cannot maintain litigation in propria persona, or appear in court through an officer of the corporation or an appointed agent not admitted to the practice of law." Worthington City School Dist. Bd. of Edn. v. Franklin County Bd. of Revision (1999), 85 Ohio St.3d 156, 160; *also see* Cincinnati Bar Association v. Clapp & Affiliates Financial Services, Inc. (2002), 94 Ohio St.3d 509, wherein a corporate officer was held in contempt for engaging in the unauthorized practice of law.

The Court has also declared that the practice of law includes the conduct of litigation and those activities which are incidental to appearances in court. Akron Bar Assn. v. Greene (1997), 77 Ohio St.3d 279. In that case, the Court reviewed its holding in Land Title Abstract & Trust Co. v. Dworken (1934), 129 Ohio St. 23, paragraph one of the syllabus, where it said, "The practice of law * * * embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts * * *." The preparation of a formal complaint pursuant to R. C. §§ 4905.26 or 4927.21 clearly meets this test for determining whether such activity constitutes the practice of law.

The Ohio Supreme Court found that the preparation, signing, and filing of documents instituting formal complaints before the Commission constitutes the practice of law. Cleveland Bar Assn. v. Woodman, 98 Ohio St.3d 436, 2003-Ohio-1634. The Commission has cited and relied on that precedent. Terry Metzenbaum v. AT&T Corp., Case No. 03-142-TP-CSS, Entry, May 22, 2003, p. 4.

For all of the foregoing reasons, Respondent AT&T Ohio respectfully prays that this Complaint be dismissed. In addition, the Commission should not process the complaint further, except on an informal basis, unless and until the Complainant corporation is represented by an attorney-at-law.

Respectfully submitted,

AT&T Ohio

By: /s/ Jon F. Kelly

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Its Attorney

13-2107.mtd

Certificate of Service

I hereby certify that a copy of the foregoing has been served this 12th day of November, 2013 on the party shown below by U. S. Mail, postage prepaid.

/s/ Jon F. Kelly

Jon F. Kelly

City of Alliance

Kevin G. Knowles
Alliance City Auditor
504 E. Main St.
Alliance, Ohio 44601

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Summary: Motion to dismiss and memorandum in support electronically filed by Jon F Kelly
on behalf of AT&T Ohio