

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO

SCIOTO WATER, INC.,
4707 Gallia Pike
Franklin Furnace, Ohio 45629

Plaintiff,

vs.

CITY OF PORTSMOUTH,
728 Second Street
Portsmouth, Ohio 45662-4036

Defendant.

CASE NO.

**VERIFIED COMPLAINT FOR DECLARATORY JUDGMENT
AND PRELIMINARY AND PERMANENT INJUNCTION
(JURY TRIAL DEMANDED)**

Plaintiff Scioto Water, Inc. (hereinafter “SWI”) states for its Verified Complaint against Defendant City of Portsmouth (“Portsmouth”) as follows:

**PARTIES, NATURE OF THE ACTION,
JURISDICTION AND VENUE**

1. SWI is a federally indebted nonprofit rural water association established in 1969 to provide safe and potable water to residents, communities, and businesses in portions of Scioto, Jackson, Lawrence and Pike Counties.

2. SWI’s principal place of business is located at 4707 Gallia Pike, Franklin Furnace, Ohio, where it operates a water treatment plant that produces .64 million gallons of water per day to serve thousands of customers.

3. Defendant Portsmouth is an Ohio municipal corporation located in Scioto County, Ohio.

4. This action arises from Portsmouth's efforts to poach a current customer within SWI's service area and less than one mile from SWI's headquarters in violation of 7 U.S.C. § 1926(b). This statute prohibits municipalities from curtailing or limiting water service provided or made available by any rural water association indebted to the USDA during the term of such indebtedness.

5. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 and the United States Constitution. Jurisdiction is also vested pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

6. Venue is proper pursuant to 27 U.S.C. § 1391(b) since Portsmouth is in this judicial district and the disputed territory and related infrastructure is located here.

FACTS COMMON TO ALL CLAIMS

7. Since 1971, SWI has owned and operated a water distribution system to provide water services to residents and businesses throughout its service territory.

8. In furtherance of those services, SWI has been indebted to the FmHA/USDA since 1971 and is a qualifying association under 7 U.S.C. § 1926(b) (hereinafter § 1926(b)).

9. Title 7 U.S.C. § 1926(b) prohibits municipalities from exercising their powers to provide competing water supply services, and from placing conditions or restrictions on the service provided by § 1926(b) associations, when the exercise of that power would result in the curtailment or limitation of the service provided or made available by SWI.

10. Since the early 1970s, SWI has provided water to all Green Local School District facilities.

11. The current high school has received water service from SWI since it was constructed in the late 1970s.

12. Beginning in 2018, the School District began planning to construct a new elementary and high school immediately adjacent to the current facility.

13. Construction is now scheduled to begin in 2021.

14. Despite SWI's longstanding customer relationship with the School District and the presence of ample waterlines surrounding the property, Portsmouth is now attempting to provide competing potable water service to the new facility.

15. Indeed, SWI has ample volume and pressure to serve the School District's potable water needs, including its planned sprinkler system.

16. The School District also plans to construct one or more fire hydrants around the exterior of the property; however, SWI does not presently provide hydrant service along Gallia Pike.

17. In prior instances where SWI does not provide hydrant service, Portsmouth and SWI have worked cooperatively to ensure that SWI provides potable water while Portsmouth supports fire hydrants.

18. Nonetheless, Portsmouth advised the School District that it will not provide hydrant service unless it also provides potable water to the buildings.

19. Simply put, SWI has the *exclusive right* to provide potable water the School District but does not object to Portsmouth providing solely hydrant service. Indeed, the infrastructure for each entity to provide the respective service is already in place. Moreover, SWI is not required to provide hydrant flows to establish protection under § 1926(b).

20. SWI raised its objection to Portsmouth's actions; however, Portsmouth continues to persist and refuses to acknowledge the exclusive nature of SWI's water service territory.

COUNT ONE

Declaratory Judgment regarding SWI's § 1926(b) Rights

21. SWI incorporates by reference each allegation stated above.

22. Portsmouth is unlawfully attempting to provide domestic water service to SWI's existing customer.

23. Portsmouth's actions violate 7 U.S.C. § 1926(b), which states:

The service provided or made available through any such association shall not be curtailed or limited by inclusion of the area served by such association within the boundaries of any municipal corporation or other public body, or by the granting of any private franchise for similar service within such area during the term of such loan; nor shall the happening of such event be the basis of requiring such association to secure the franchise, license, or permit as a condition to continuing to serve the area by the association at the time of the occurrence of such event.

24. SWI is an "association" within the meaning of 7 U.S.C. §1926(b), is indebted to FmHA/USDA, and, at all times material hereto, has provided, or made available, water service to the School District.

25. Accordingly, SWI is entitled to the rights, privileges and protections granted by 7 U.S.C. §1926(b).

26. Portsmouth's attempted water service to the School District within SWI's service area curtails and limits the water service provided, or made available, by SWI in violation of 7 U.S.C. §1926(b).

27. As there exists a dispute and actual controversy between the parties that cannot be resolved absent declaratory relief, SWI is entitled to a judgment pursuant to 28 U.S.C. §§ 2201 and 2202 declaring the rights and legal relations of the parties as follows:

- a. That SWI is an "association" within the meaning of 7 U.S.C. § 1926(b), is currently indebted to the FmHA/USDA, and, at all times material, has provided or made available water service to the

subject territory;

- b. That SWI is entitled to the rights, privileges and protections granted under 7 U.S.C. § 1926(b) during the term of the indebtedness; and
- c. That the actions of Portsmouth and all those acting in concert with Portsmouth, in providing potable water service within SWI's Service Territory will unlawfully curtail or limit SWI's service in violation of 7 U.S.C. § 1926(b).

COUNT TWO
Violation of 42 U.S.C. § 1983

28. SWI incorporates by reference each allegation stated above.

29. Portsmouth's encroachment into SWI's federally protected service territory constitutes a deprivation of SWI's rights under color of state law.

30. To establish a § 1983 violation, SWI must show (1) that Portsmouth has deprived SWI of a federal constitutional or statutory right (here under 7 U.S.C. § 1926(b)) or threatens to do so; and (2) that Portsmouth acted under color of state law when it deprived or threatened to deprive SWI of its federal rights under § 1926(b).

31. SWI has a federal right under § 1926(b) to be protected from any curtailment or limitation of the water supply services that SWI has provided or made available.

32. Portsmouth's attempt to extend water service to SWI's current customer constitutes a deprivation of SWI's § 1926(b) rights.

33. Portsmouth's actions are conducted under color of state law by virtue of Portsmouth's status as a municipality and its actions under state law to serve domestic water within SWI's service territory.

34. SWI will suffer damages as a result of Portsmouth's unlawful encroachment in an amount yet to be determined.

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