

Andy Beshear  
Governor

Rebecca W. Goodman  
Secretary  
Energy and Environment Cabinet



Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

Kent A. Chandler  
Chairman

Mary Pat Regan  
Commissioner

August 2, 2022

**PSC STAFF OPINION 2022-011**

*Sent via electronic mail to jkaninberg@gmail.com*

Mr. Jack Kaninberg  
Kentucky Small Utility Consulting, LLC  
8105 Parkshire Court  
Louisville, KY 40220

Re: Request for Staff Opinion – PSC jurisdiction over Top Flight sewer system

Dear Mr. Kaninberg:

Commission Staff acknowledges receipt on June 9, 2022, of your letter in which you request, on behalf of Kentucky Small Utility Consulting, LLC (KSUC), that Commission Staff provide “confirmation that the PSC does not have jurisdiction over Top Flight HOA Sewer System and its transfer to the Sewer District.”<sup>1</sup> You state that a municipal sewer district is interested in acquiring Top Flight Sewer System and, in conducting due diligence, the municipal sewer district questioned the non-jurisdictional status of Top Flight Sewer System.

In summary, you state that Top Flight Subdivision and the Top Flight HOA Sewer System, located in Spencer County, Kentucky, were developed in the early 2000s, that the development was assumed by a bank and in October 2015, the bank sold Top Flight Subdivision to two developers in 2015. You state that the two developers transferred Top Flight Sewer System to Kentucky Small Utility Consulting, LLC (KSUC) in October 2015. According to the Operations Agreement filed with your request and in your letter, Top Flight Sewer System charges a monthly rate for sewer service, which is \$50 or \$54 per month depending on payment format, a tap on fee of \$2,50,; and an annual assessment. According to the letter and attached documents, KSUC bills residents directly, KSUC owns the land on which the sewer facility is located, and all permits are held in KSUC’s name, and not the HOA.

---

<sup>1</sup> Letter requesting Staff Opinion (filed June 9, 2022) at unnumbered page 3.

Jack Kaninberg  
Kentucky Small Utility Consulting, LLC  
August 2, 2022  
Page 2

In your letter, you also state that Top Flight Sewer System does not offer or provide sewer service to any property outside of the Top Flight Subdivision and that the HOA, and not KSUC, retains the legal authority to pursue collection actions against homeowners who do not pay the annual sewer assessment.

In addition to the Operational Agreement, you provided a February 3, 2022, legal memorandum written by an attorney, David Spenard, Strobo Barkley PLLC, that rendered the opinion that Top Flight sewer system is not a utility as defined by KRS 278.010(3)(f), as well as copies of two letters you state demonstrate that Top Flight sewer system is not a utility subject to Commission jurisdiction.

Commission Staff notes that a Staff Advisory Opinion is not binding upon the Commission and cannot be cited as precedent in any future matters. Because your request was for “confirmation” whether Top Flight Sewer System is subject to the Commission’s jurisdiction, and such a request is outside the scope of a Staff Advisory Opinion, Commission Staff is of the opinion that a Staff Advisory Opinion is not the appropriate forum to obtain binding confirmation regarding Top Flight Sewer System’s jurisdictional status.

Commission Staff is of the opinion that, to obtain a binding decision regarding the jurisdictional status of Top Flight Sewer System, KSUC and the acquiring sewer district should file an application for a declaratory order in accordance with 807 KAR 5:001, Section 19. Commission Staff notes that 807 KAR 5:001, Section 19(1) states that a declaratory order may be requested “with respect to the jurisdiction of the [C]ommission.”

This letter represents Commission Staff’s interpretation of the law as applied to the facts as presented. The opinion is advisory in nature and not binding on the Commission should the issues herein be formally presented for Commission resolution. Questions concerning this opinion should be directed to Nancy J. Vinsel, General Counsel, at (502) 782-2582 or [nancy.vinsel@ky.gov](mailto:nancy.vinsel@ky.gov).

Sincerely,



Nancy J. Vinsel  
General Counsel