

(Decision No. C88-599)

BEFORE THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO

IN THE MATTER OF THE REMAND OF HOME)	APPLICATION NO. 32602-Reopened
BUILDERS ASSOCIATION OF METROPOLITAN)	
DENVER V. PUBLIC UTILITIES)	COMMISSION DECISION AND ORDER
COMMISSION OF THE STATE OF COLORADO)	DENYING APPLICATION FOR
AND PUBLIC SERVICE COMPANY OF)	REHEARING, REARGUMENT,
COLORADO: CIVIL ACTION NO.)	OR RECONSIDERATION OF DECISION
82 CV 1747, DIVISION 9, DENVER)	NO. C88-413
DISTRICT COURT, CITY AND COUNTY OF)	
DENVER, DENVER, COLORADO.)	

May 18, 1988

STATEMENT AND FINDINGS OF FACT

BY THE COMMISSION:

On March 14, 1988, Public Service Company of Colorado (Public Service) filed a "Motion Pursuant to C.R.S., § 40-6-116(5)", requesting the Commission to enter an order directing Public Service to give notice by publication regarding the amounts not claimed by the persons entitled to them in accordance with the provisions of § 40-6-116(5), C.R.S. The Commission granted Public Service's motion in Decision No. C88-413, dated April 6, 1988.

On April 22, 1988, the Cities of Arvada and Lakewood (Cities) filed an application for rehearing, reargument, or reconsideration of Decision No. C88-413. The Cities state that the proper escheat statute to be applied is not § 40-6-116(5), C.R.S., (which requires that unclaimed funds be paid to the State General Fund), but rather § 40-8-101, C.R.S., (which requires that escheated funds be paid to municipalities). It is the position of the Cities that these two statutory sections are irreconcilable and that the later enacted section, namely § 40-8-101, C.R.S., is controlling.

The Cities further suggest by their application for rehearing, that the Commission may believe it is constrained by the order entered by the Denver District Court in this matter which, by its terms, indicate that the provisions of § 40-6-116(5), C.R.S., shall be followed. As indicated in Decision No. C88-413, the Commission, on February 3, 1987, had entered Decision No. C87-166 which contains the statement that the issue of which escheat statute, namely § 40-6-116(5), C.R.S., or § 40-8-101, C.R.S., applies, has been determined by Judge Martin in his remand order and that any changes in that order must be sought from the

Denver District Court. The Cities invite the Commission to seek this change from the Denver District Court, and append to its application for rehearing, reargument, or reconsideration what was a proposed pleading to be filed with the Denver District Court entitled "Petition for Clarification". This Petition for Clarification would request the District Court to modify its order entered on September 9, 1986, so that the provisions of § 40-8-101, C.R.S., would be applicable and so that any unclaimed monies to be refunded would go to the appropriate municipalities.

The Commission finds that any request to change the district court's order with respect to the application of the appropriate escheat statute should be sought in the Denver District Court by the party or parties who have an interest in obtaining that result. The Commission, of course, will not speculate as to the outcome of a petition for clarification if one were to be filed by the Cities in the Denver District Court. The Commission also notes that in the case of People ex rel. Dunbar v. People ex rel. City and County of Denver, 141 Colorado 459, 349 P.2nd 142 (1960), the Colorado Supreme Court stated that the general escheat statute as then contained in § 15-3-614, C.R.S. (1953), and § 115-8-1, C.R.S. (1953), (which is the present § 40-8-101, C.R.S.), must both be given effect if this can be done by interpretation since the two statutes are deemed to be complimentary rather than conflicting. Whether the same rule of law as applied in the Dunbar case would be applicable to a comparison between § 40-6-116(5), C.R.S., and § 40-8-101, C.R.S., will have to be decided by the Denver District Court.

On May 10, 1988, The Home Builders Association of Metropolitan Denver filed a motion to withdraw. The Commission finds that this motion sets forth good grounds and should be granted. The Commission will also waive response time to this motion.

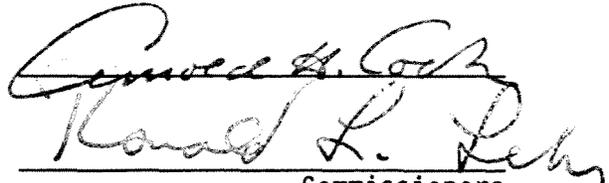
THEREFORE THE COMMISSION ORDERS THAT:

1. The application for rehearing, reargument, or reconsideration of Decision No. C88-413, filed by the Cities of Arvada and Lakewood on April 22, 1988, is denied.

2. The Motion for Leave to Withdraw as a party filed on May 10, 1988, by The Home Builders Association of Metropolitan Denver is granted. Response time to this motion is waived.

3. This Decision and Order shall be effective forthwith.
DONE IN OPEN MEETING the 18th day of May 1988.

THE PUBLIC UTILITIES COMMISSION
OF THE STATE OF COLORADO



Commissioners

COMMISSONER ANDRA SCHMIDT ABSENT

MRH:nrg:1940G:jkm