

ORIGINAL

19808 Frenchman's Court
North Fort Myers, FL 33903

Mr. D. Tyler Van Leuven
Staff Attorney
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

July 13, 2000

Docket 000277 W-S

Dear Mr. Van Leuven:

Tuesday morning's News Press (July 12, 2000) headlined an article "**Lee utility director resigns**, Two commissioners now questioning Stilwell's fitness" These Commissioners, who are now proponents of "privatizing" water and sewer utilities, are the same individuals who schemed to persuade Lee County to buy out NFMU for \$59.5 million just a few months ago. According to NFMU's Annual Report (1998) filed with the Public Service Commission, the utilities assets totaled only \$20.4 million, about three times less what Lee County, under the guidance and urging of Mr. French, were willing to pay for the virtually bankrupt company.

I am forwarding this article to the PSC's Director of Records and Reporting in order that it becomes part of Docket 000277 W-S. This is getting monotonous for both of us, I'm sure.

Very truly yours,



Alexander William Varga

CC: Leon Beekman - President, Pine Lakes Estates Home Owners Association, Inc.
Jennifer Brubaker - Staff Attorney PSC
Charles H. Liedtke - Publisher, Lee County Examiner
Joe Fenton - Editor, The News Press
Lee Melsek - The News Press
Mike Hoyem - The News Press
nbcnews@nbc-2.com
winknews@winktv.com

Attachments Enclosed (2 of 2 pages, and 1 page)

The News Press - July 12, 2000 "**Lee utility director resigns**".
"2 commissioners now questioning Stilwell's fitness".

APP The News Press - July 12, 2000 "**Lee utility decision delayed for audit**"
CAF _____ "To avoid embarrassment, commissioners put off awarding \$50 million
CMP _____ in contracts.
COM _____
CTR _____
ECR _____
LEG _____
OPC _____
PAI _____
RGO _____
SEC _____
SER _____
OTH _____

SEARCHED
SERIALIZED
INDEXED
FILED
JUL 13 2000
FBI - TAMPA

DOCUMENT NUMBER-DATE

08642 JUL 18 8

Lee utility director resigns

NEWS
PRESS
7/12/00

2 commissioners now questioning Stilwell's fitness

By LEE MELSEK

Lee County Public Works Director J.W. French resigned Tuesday only hours after County Manager Don Stilwell said he'd be fired if he didn't quit by 4 p.m.

French lost his \$111,000-a-year job because of sloppy management and questionable actions in multimillion-dollar utility deals that have dogged the county's purchases of water and sewer companies.

Some of those same problems also now appear to be hounding Stilwell's job.

Two commissioners, Doug

St. Cerny and Ray Jadah, question Stilwell's ability to lead in the wake of audit reports outlining mismanagement in the county's utility department.

Their concerns come at the very time the board must decide whether to let Stilwell's contract be automatically extended another year.

"This county needs some leadership now. It needs better leadership and accountability," St. Cerny said.

Last year St. Cerny gave Stilwell the highest marks —



FRENCH

See DIRECTOR / 10A

■ Utility contract held / 1B

DIRECTOR: Stilwell disappointed

From Page 1A

exceeds expectations — in all five categories of Stilwell's evaluation.

Judah, noting this is the month Stilwell's contract will be automatically extended through July 2002 unless commissioners reject it, said he considered asking the board not to extend the contract but decided not to for now.

"It would give him notice his contract is not automatically renewed next year. I have been very displeased at his handling of all of this," Judah said.

Last year Judah said Stilwell met expectations in all five categories of his evaluation.

If Stilwell's contract automatically extends another year after July 2001, his current salary of \$164,000 a year will increase by 5 percent to \$172,200.

Judah was upset because Stilwell didn't attend a June 27 audit report in which commissioners were told of the county's poor supervision of their water and sewer plant contractor. Stilwell skipped the meeting to go to his hairdresser.

Stilwell refused to discuss French's resignation Tuesday. He also refused to say what he told French in talks Monday and Tuesday.

"I don't think it's appropriate to discuss personnel matters," Stilwell said. "There are concerns in the utility area, and we are committed to correcting them."

Contacted at his home Tuesday, French refused to comment.

Stilwell also said he was disappointed by St. Cerny's and Judah's comments.

"I talked to Ray Judah, and he expressed his concerns to me and said he was considering bringing up my contract but he changed his mind," Stilwell said. "I told Mr. Judah the board can terminate me

any day. I am surprised there is a reflection on my performance. I am surprised to hear it through the press."

French, 63, was the county's point man in multimillion-dollar utility acquisitions over the past three years.

An investigation by The News-Press found he failed to reveal conflicts of interest in one utility deal and aided the secret role of a powerful lobbyist who stood to make hundreds of thousands of dollars in another deal.

French, a member of Stilwell's inner circle for the past seven years, began falling from grace in June when he was suspended with pay as more information about his actions in the utility deals surfaced.

After denying for months he knew about conflicts of interest on the part of Fort Myers lobbyist James Garner in an attempted \$60-million utility purchase, French admitted June 7 that he did know.

French was suspended the next day, but he still was allowed to draw his pay, amounting to a little over \$9,000 a month.

The suspension was ordered by Stilwell, who until that point stoutly defended French, along with Commissioner John Manning.

But commission Chairman John Albion had been growing more critical of French and of Stilwell's reluctance to do something about it.

Albion told Stilwell so several times, including last week when Stilwell was on vacation in California and Oregon.

At that point Stilwell promised to take "decisive action."

French will be given \$5,219 for 390 hours of unused sick time when he officially leaves his job Aug. 21 after first taking his paid vacation.

Questions surrounding French's actions in utility deals surfaced in March when The News-Press found he'd recommended to commissioners in September the board

"I told Mr. Judah the board can terminate me any day. I am surprised there is a reflection on my performance. I am surprised to hear it through the press."

— Don Stilwell,
county manager

hire a Coral Gables firm to be the county's negotiator in its planned purchase of North Fort Myers Utility.

What commissioners and Stilwell say French didn't tell them was that the firm really was a company operated by two of Garner's employees and that Garner would be doing the negotiating.

That arrangement raised questions of conflicts of interest on Garner's part because he had represented North Fort Myers Utility only weeks earlier in a move to increase the company's value by forcing north Fort Myers mobile home parks to hook into the utility's sewer lines.

Although Garner denied representing the company, he indicated the company was a client in a letter he wrote Florida Department of Environmental Protection Secretary David Struhs on July 29, 1999.

French for three months steadfastly denied he knew anything about Garner's representation of the company. But June 7 he admitted to a reporter he'd read the letter in which Garner referred to the company as his client.

Stilwell said he knew little

about the North Fort Myers Utility deal because he was "left out of the loop."

Other questions also surfaced about French's relationship with Garner.

In 1998 French also aided Garner, this time in the \$43-million purchase of Gulf Utility in south Lee County. The utility was bought by a private, nonprofit corporation created by Garner. Tallahassee attorney Bill Sundstrom and their client, Severn Trent Environmental Services.

French had given the men permission to pursue the deal in an arrangement that someday would bring the utility into county ownership.

Sundstrom told Gulf Utility President James Moore he and Garner in October 1997 were acting on behalf of the county and if the utility didn't sell, commissioners had assured Garner they would take the plant through eminent domain proceedings.

But there are no records to show the board ever gave Sundstrom and Garner the authority to do that.

Albion said the two men had no authority to use the county's name or threaten eminent domain in their attempt in 1997 to buy the company.

Lobbyist disclosure records show Garner and Sundstrom talked to French about the purchase seven times in 1997. But commissioners didn't take any action to get involved in the deal until March 31, 1998.

The private, nonprofit company bought the utility in a deal county auditors say cost more than it would have if the county had bought the utility itself. Garner, Sundstrom and Severn Trent reaped more than \$1 million in fees for putting the deal together.

Stilwell said he also was left out of the loop in the Gulf Utility deal.

— Contact Lee Melsek at lmelsek@news-press.com or 335-0386.



JUDAH

Lee utility decision

To avoid embarrassment, commissioners put off awarding \$50 million in contracts

By **MIKE HOYEM**
The News-Press

Two companies hoping to land more than \$50 million in Lee County utility contracts went away disappointed Tuesday when county commissioners agreed to await another audit before making their decision.

Two commissioners — clearly distressed over the way the

county's private utility contractor has done its work — talked of giving the job back to county employees.

But that's not likely to happen because it's estimated the county, despite the problems, has saved taxpayers about \$10 million since 1995 by hiring an outside company.

After commissioners get the audit on how Severn Trent-Avatar Utility Services has

done the job, they can decide whether to give the company another contract or hire its sole competitor, Azurix Corp.

Another alternative would have the commissioners splitting the water and sewer contracts between the two companies.

Commissioners made it clear they weren't happy after recent audits showing Severn Trent failed to properly maintain county utilities — including numerous pump stations and thousands of utility meters — largely because the company wasn't adequately monitored

The audit is being conducted by employees of Lee County Clerk of Court Charlie Green, who estimated it will be finished in 60 days or so.

Most commissioners agreed the best course of action would be to give Severn Trent a three-month contract extension and await the results of the audit before awarding anyone another \$50 million-plus contract.

"I would rather go that route than take action today," Commissioner Ray Judah said. "There's too much at stake."

Commissioner John Manning suggested splitting the contracts between the two companies for 18 months and reviewing both contracts after a year.

But after lengthy debate, all five commissioners agreed to delay the decision and wait for the audit.

Green told commissioners the big concern shouldn't be who gets the contract or contracts, but how the work is monitored.

delayed for audit

by the county.

County Manager Don Stilwell vowed to develop a plan to make sure that doesn't happen again.

"We're all embarrassed about the lack of oversight in the utility area," Stilwell told commissioners. "It was an honest mistake that was made. ... We all make mistakes. When you do it twice, you screw up. We're not going to screw up."

Commission Chairman John Albion expressed optimism things will improve. He said the county "tried to do it right" but in its first effort at

privatizing utilities "didn't have a textbook or a handbook to go by."

Commissioners agreed in 1993 to privatize utilities and hired Severn Trent in 1995 to do the job.

The company has bid \$52 million to do the job for another five years. Azurix's bid totals \$53.5 million.

County employees have recommended Severn Trent-Avatar get another contract, but Azurix executives filed a formal protest. They've claimed Severn Trent is underbidding the job by not budget-

ing enough money for maintenance, and say county officials allowed the company to change its bid, which county officials deny.

Commissioners were scheduled to hear detailed arguments from both companies Tuesday on why each should get the contract. But the hearing never got off the ground because most commissioners said the best thing to do would be to await an audit of Severn Trent's performance.

See **UTILITY / 4B**

■ **More commission / 4B**

"Like all entities, if you don't watch things, they don't work out the way you want them to," Green said, adding that county employees have not done the job effectively in the past but "can come up to speed."

Commissioner Doug St. Cerny said he saw no reason to believe that will happen and suggested the job be given back to county employees.

Judah agreed it's something to consider, saying the way the job has been done in the past "reflects the services we provide to the rate-payers."

But most commissioners said it would probably be unwise to take the job back because of the millions of dollars the county is saving through privatization.

"To jump at thinking bringing it back in-house is going to save us a lot of money is very premature," Manning said.

Albion and Commissioner Andy Coy agreed. Albion said that would amount to overkill.

"You don't need a shotgun to destroy an ant hill," Albion said.

† Mike Hoyem can be reached at mhoyem@news-press.com or 335-4222.