

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of Central Lakes Corporation for a Declaratory Statement Regarding its Exempt Status under Section 367.022(7), Florida Statutes.)	DOCKET NO. 900516-WU
)	ORDER NO. 23897
)	ISSUED: 12-18-90

The following Commissioners participated in the disposition of this matter:

CHAIRMAN MICHAEL MCK. WILSON
 COMMISSIONER THOMAS M. BEARD
 COMMISSIONER BETTY EASLEY
 COMMISSIONER GERALD L. GUNTER
 COMMISSIONER FRANK S. MESSERSMITH

DECLARATORY STATEMENTBY THE COMMISSION:

By petition filed May 29, 1990, Central Lake Utilities Corporation (Central Lake) requested a declaratory statement regarding its entitlement to exempt status as a nonprofit corporation under the terms of section 367.022(7), Florida Statutes, if it provides wastewater treatment service for no compensation to an entity that is not a member of the nonprofit corporation.

CASE BACKGROUND

Central Lake Utilities Corporation (Central Lake) is a Florida nonprofit corporation that was formed to provide wastewater treatment service to its members, Lykes Development Corp. (Lykes) and Mission Inn, in Lake County, Florida. Each member holds 50 per cent of the authorized stock, and each member is entitled to elect one-half of the directors of the corporation. At present Central Lake only provides service to Mission Inn, but the by-laws provide that it may provide service to Lykes Development in the future.

Central Lake has filed this petition for declaratory statement because it wishes to provide wastewater treatment service to Silver Springs Citrus Cooperative (Silver Springs), a citrus processing plant located adjacent to Central Lake's wastewater treatment

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plant. Silver Springs has been ordered by Lake County to stop using septic tanks for collection of wastewater from its processing plant. Silver Springs is apparently unable to construct a wastewater treatment facility on its own property, and is therefore desirous of receiving service from Central Lake. Central Lake states in its petition, and again in a letter from its attorney to staff, that it wishes to provide service to Silver Springs, but it does not intend to charge Silver Springs for that service. Since Silver Springs is not a member of the nonprofit corporation, Central Lake is uncertain whether it will become subject to regulation by the Commission if it provides the service Silver Springs requests. Therefore, Central Lake has asked the Commission to declare that it may provide wastewater treatment service for no compensation to Silver Springs, and still remain exempt from Commission regulation by the terms of section 367.022(7), Florida Statutes.

PRELIMINARY MATTERS

Central Lake has shown a genuine question or doubt about its entitlement to an exemption from Commission regulation for its wastewater treatment system if it provides service at no compensation to an entity that is not a member of the nonprofit corporation. Central Lake has also shown a need for the Commission to issue an order resolving the issue, so that it can proceed with its plans to provide wastewater treatment service to Silver Springs. Therefore, the petition should be granted, with the understanding that a declaratory statement is a ". . . means of resolving controversy or answering questions or doubts concerning the applicability of any statutory provision, rule, or order as it does, or may, apply to petitioner in his or her circumstances only". Rule 25-22.021, Florida Administrative Code. The Commission's resolution of the question raised in the petition will apply only to Central Lake, and only under the particular set of circumstances presented here.

DISCUSSION

Three provisions of Chapter 367, Florida Statutes, the "Water and Wastewater System Regulatory Law", govern the jurisdictional question presented in this petition. The first provision, section 367.011 (2), states that "The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service, and rates". The second provision, section 367.021 (12), states that, " 'Utility' means a water or wastewater utility and, except as provided in s. 367.022, includes every person, lessee, trustee, or receiver owning, operating, managing,

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or controlling a system . . . who is providing, or proposes to provide, water or wastewater service to the public for compensation". The third provision, section 367.022, Florida Statutes, exempts entities that provide certain types of utility service from Commission regulation, even though they would otherwise meet the jurisdictional definition of a utility. Specifically, subsection (7) states that, "[n]onprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives. . . ." are not subject to regulation by the Commission as a utility.

Central Lake is clearly entitled to an exemption from Commission jurisdiction as a nonprofit corporation when it provides wastewater service to its members. Nor would Central Lake be subject to Commission jurisdiction for providing service to Silver Springs for free. The problem arises because Central Lake proposes to combine the two activities, and the question becomes whether Central Lake will become a jurisdictional utility by doing so.

Central Lake contends that it should not become a jurisdictional utility, because it will not be charging Silver Springs for the wastewater service it provides, and the provision of service without compensation is not the type of activity that the Legislature intended to subject to the Commission's regulatory authority.

[O]nly jurisdictional service outside the scope of an exemption in Section 367.022 should be deemed to disqualify the provider from such exemption. The Legislature intended that those providing service without compensation should not be subject to regulation, and intended as well that nonprofit corporations providing service to their members not be regulated. Petitioner submits that the combining of the two types of service - neither of which was intended to be regulated - should be permissible without either of such services thereby becoming subject to the Commission's jurisdiction. Petition for Declaratory Statement, p. 5.

This is a close question. One could justifiably argue that the exemption provided for a nonprofit association must be strictly construed against the one claiming the exemption, and since the exemption is offered to nonprofit corporations that provide service solely to their members, the exemption would be forfeited by a nonprofit corporation that provides service of any kind to nonmembers. (See, for example, Coe v. Broward County, 327 So.2d 69

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(Fla. 4th DCA 1976), and State v. Nourse, 340 So.2d 966 (Fla. 3d DCA 1976), which hold that statutory exceptions to general laws should usually be strictly construed against the one claiming the exception.) We believe, however, that the better reasoned position is the one argued by Central Lake: a wastewater utility entitled to an exemption from regulation should not lose that exemption when it provides wastewater service that would not be subject to the Commission's regulatory authority in the first place.

In construing the application of the Water and Wastewater Regulatory Law to the activity at issue here, one should give effect to every part of the statute in order to preserve the sense or purpose of the law and the general policy that dictated its enactment. Vocelle v. Knight Bros. Paper Co., 118 So. 2d 664 (Fla. 1st DCA 1960). Also, the law should be read in a manner that yields a rational, sensible result, and avoids an interpretation that produces unreasonable consequences. State v. Webb, 398 So. 2d 820 (Fla. 1981); Agrico Chemical Co. v. State Dept. of Environmental Regulation, 365 So.2d 759. The Water and Wastewater Regulatory Law should be read as a whole and the terms of the nonprofit corporation exemption should not be interpreted mechanistically to impose regulatory jurisdiction on activity that the Legislature clearly did not intend to regulate.

The Legislature did not intend to regulate the provision of all water and wastewater service. It only intended to regulate the provision of water and wastewater service sold to the public. The jurisdictional definition of the word "utility" in section 367.021(12), Florida Statutes, provides that only those who offer water and wastewater service to the public for compensation will be considered utilities subject to the provisions of the Water and Wastewater Regulatory Law. That jurisdictional requirement reflects the Legislature's primary intention to regulate, through its duly delegated administrative agency, the service, rates and charges of water and wastewater utilities, to prevent unreasonable and discriminatory charges for services that are essential to the public welfare. City of Tampa v. Tampa Waterworks Co., 34 So. 631 (Fla. 1903); Miami Bridge Co. v. Railroad Commission, 20 So. 2d 356 (Fla. 1944); Cohee v. Crestridge Utilities Corp., 324 So.2d 155 (Fla. 2d DCA 1975).

In accordance with the Legislature's intent, the Commission has consistently granted an exemption from regulation to those entities that did not charge customers for the provision of water or water service, and to those entities that provided service only to themselves. See, for example, Order No. 19060, Docket No. 880159-WS, In Re: Petition by Adam Smith Enterprises, Inc. for a Declaratory Statement as to Jurisdictional Status, and Order No. 23239, Docket No. 900398-WU, In Re: Request for Exemption from

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Florida Public Service Commission Regulation for the Lykes Citrus Management Office and Shop Water System in Highlands County by Lykes Brothers, Inc. The Commission has also agreed under certain circumstances to a combination of exemptions or an application of multiple exemptions to a water or wastewater system. See, for example, Order No. 13259, Docket No. 840124-WS, In Re: Jurisdictional Status of Continental Home Parks, Inc., d/b/a/ Colony Mobile Home Park, and Order No. 19474, Docket No. 880513-SU, In Re: Request by Bonita By The Sea Hotel for exemption from FPSC regulation for a Sewer System in Lee County.

CONCLUSION

We find that the circumstances presented in this petition do not contradict the primary purpose and intent of the Water and Wastewater Regulatory Law, and we can identify no harm to the public interest therein. Therefore, we hold that Central Lake Utilities Corporation will remain entitled to an exemption from Commission regulation under the terms of section 367.022(7), Florida Statutes, when it provides wastewater treatment service to Silver Springs Citrus Cooperative for no compensation. Should there be a change in the facts and circumstances as presented in the petition, however, Central Lake must inform the Commission so that a determination can be made whether exempt status would still be appropriate. Central Lakes has already indicated in its letter to staff that it intends to do so. We also remind Central Lake that they have not formally requested an exemption from regulation under section 367.031, Florida Statutes. Therefore, Central Lake must submit a formal request for exemption with all necessary affidavits, information, and documentation, to demonstrate that it is entitled to exemption as a non profit corporation and that it will not receive compensation of any kind from Silver Springs for the wastewater service it receives from Central Lake.

Now, therefore, it is

ORDERED by the Florida Public Service Commission that the Petition for a Declaratory Statement filed by Central Lake Utilities Corporation is granted. It is further

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ORDERED that the substance of the Declaratory Statement is as set forth in the body of this order. It is further

ORDERED that this docket should be closed.

BY ORDER of the Florida Public Service Commission, this 18th day of DECEMBER, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

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by: Kay J. Jenson
Chief, Bureau of Records

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.