

FLORIDA PUBLIC SERVICE COMMISSION  
Capital Circle Office Center • 2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

M E M O R A N D U M

DECEMBER 26, 1996

TO: DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYO)

FROM: DIVISION OF WATER & WASTEWATER (TOMLINSON) *CSM*  
DIVISION OF LEGAL SERVICES (AGARWAL) *RA*

RE: DOCKET NO. **951235-WS** - RESOLUTION OF THE BOARD OF COUNTY  
COMMISSIONERS OF MANATEE COUNTY DECLARING MANATEE COUNTY  
SUBJECT TO THE PROVISIONS OF CHAPTER 367, FLORIDA  
STATUTES - REQUEST FOR EXEMPTION FOR PROVISION OF WATER  
AND WASTEWATER SERVICE BY GOLF LAKES RESIDENTS  
ASSOCIATION, INC.  
COUNTY: MANATEE

AGENDA: JANUARY 7, 1997 - REGULAR AGENDA - INTERESTED PERSONS MAY  
PARTICIPATE

CRITICAL DATES: NONE

SPECIAL INSTRUCTIONS: S:\PSC\WAW\WP\951235WS.RCM

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### CASE BACKGROUND

On October 10, 1995, the Board of County Commissioners of Manatee County adopted Resolution No. R-95-109, pursuant to Section 367.171, Florida Statutes, declaring that as of October 10, 1995, the water and wastewater utilities in that County shall become subject to the provision of the Water and Wastewater Regulatory Law, Chapter 367, Florida Statutes. The resolution was acknowledged by this Commission on November 9, 1995, by Order No. PSC-95-1393-FOF-WS. Prior to July 1, 1996, Section 367.131, Florida Statutes, required a utility subject to the jurisdiction of this Commission to obtain a certificate of authorization or an order recognizing the exempt status of the system.

On November 29, 1995, this Commission received an application from Golf Lakes Residents Association, Inc., (Golf Lakes or Association) for a non-profit exemption pursuant to Section 367.022(7), Florida Statutes and Rule 25-30.060(3)(g), Florida Administrative Code. Golf Lakes is a homeowners association which oversees the operation of the transmission and collection system to homeowners in the community of Golf Lakes Mobile Home Park in Manatee County. The Association currently receives bulk water and wastewater service provided by Manatee County. Golf Lakes Mobile Home Park currently has 780 units, of which only 760 of the units are members of the Association. The members of the Association are billed quarterly maintenance fees and the non-members are billed rent each month, but remit no compensation for utility service.

As set forth in Section 2.07(C)(14) of the Administrative Procedures Manual, the Commission has granted staff administrative authority to approve requests for determination of exempt status that are clear-cut and without controversy. The requirement for a nonprofit exemption pursuant to Section 367.022(7), Florida Statutes, is that the nonprofit entity provide water and/or wastewater service solely to members who own and control it. Since the Association is providing water and wastewater service to nonmembers for no compensation, therefore the application is not the standard exemption and this recommendation is before the Commission for consideration.

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### DISCUSSION OF ISSUES

ISSUE 1: Should the Commission grant Golf Lakes Residents Association, Inc., an exemption from Florida Public Service regulation for provision of water and wastewater service pursuant to Section 367.022(7), Florida Statutes, and acknowledge the nonjurisdictional status for the provision of service without compensation to the 20 nonmembers?

RECOMMENDATION: Yes. Golf Lakes Residents Association, Inc., should be granted an exemption from Commission regulation for providing water and wastewater service to members of the homeowners association pursuant to Section 367.022(7), Florida Statutes. In addition, the Commission should acknowledge that providing water and wastewater service to a nonmember without compensation falls outside the definition of utility service pursuant to Section 367.021(12), Florida Statutes and is non-jurisdictional. Further, the Commission should put Golf Lakes Residents Association, Inc., or its successors in interest, on notice that if there is any change in circumstances or method of operation which causes it to no longer qualify for exemption pursuant to Section 367.022, Florida Statutes, it should inform the Commission within 30 days of such change so that its status may be reevaluated. (TOMLINSON, AGARWAL)

STAFF ANALYSIS: On November 29, 1995, an application for exemption from Florida Public Service regulation pursuant to Section 367.022(7), Florida Statutes, was filed on behalf of Golf Lakes. The application was signed by Mr. Michael A. Gist, manager of Golf Lakes and primary contact for the application. The address for Mr. Gist is 5050 5th Street East, Bradenton, Florida 34203. The physical address of the system is the same. This location is in Manatee County.

Except as described below, the application was filed in accordance with Section 367.022(7), Florida Statutes, and Rules 25-30.060(2) and (3)(g), Florida Administrative Code. Mr. Gist filed a statement that Golf Lakes is a nonprofit corporation intending to provide service solely to members who own and control it. Golf Lake's Articles of Incorporation and By-Laws were attached to the application and clearly show the requirements for membership and that the members' voting rights are one vote per unit of ownership. The Association is 100% membership owned and operated. Finally, by signing the application, Mr. Gist acknowledged that he is aware of the penalty pursuant to Section 837.06, Florida Statutes, for knowingly making false statements in writing with the intent to mislead.

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Section 367.022(7), Florida Statutes, exempts from regulation:

nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives.

Pursuant to its Articles of Incorporation and By-Laws, Golf Lakes intended to provide service solely to members who owned and controlled the Association. However, 20 units of the 780 total lots within Golf Lakes Mobile Home Park are owned by the Association. These 20 units are then leased to tenants who are non-members of the Association. Golf Lakes has provided a statement indicating that the tenants are not being charged for water or wastewater service. Therefore, although the Association is providing water and wastewater service to nonmembers, it is not receiving any compensation.

The Commission issued a declaratory statement regarding a similar situation in Docket No. 900516-WU where Central Lake Utilities Corporation (Central Lake) asked the Commission if it would still be entitled to exempt status as a nonprofit corporation if it provided wastewater treatment service without compensation to a nonmember. The Commission answered the question in the affirmative by Order No. 23897, issued December 18, 1990. In that order, the Commission exempted Central Lake from regulation and specifically said:

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.

In addition, the Commission considered an identical situation in Docket No. 951154-WU where Montpelier Village Club, Inc. provided water service to one non-member without compensation in conjunction with service to its association members. By Order No. PSC-95-1436-

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FOF-WU, issued on November 27, 1995, the Commission reaffirmed its above ruling in Docket No. 900516-WU.

Also, in Order No. 24044, issued on January 29, 1991, in Docket No. 900814-WU, the Commission denied an exemption to Zellwood Water Users, Inc. (Zellwood), because Zellwood was providing service to two nonmembers for compensation. In denying the exemption, the Commission stated, "this Commission has consistently required that service be provided only to members of the non-profit entity unless the service to non-members is provided without compensation, see Order No. 23897."

Based on the foregoing, staff recommends that Golf Lakes Residents Association, Inc., be granted an exemption pursuant to Section 367.022(7), Florida Statutes, for service to its members. Staff further recommends that the Commission acknowledge that provision of water and wastewater service to a nonmember without compensation is non-jurisdictional pursuant to Section 367.021(12), Florida Statutes. In addition, staff also recommends that the order also put on notice the Association, or its successors in interest, that if there is any change in circumstances or method of operation which causes it to no longer qualify for exemption pursuant to Section 367.022, Florida Statutes, it should inform the Commission within 30 days of such change so that its status may be reevaluated.

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ISSUE 2: Should this docket be closed?

RECOMMENDATION: Yes, the docket should be closed. (TOMLINSON, AGARWAL)

STAFF ANALYSIS: If the Commission approves staff's recommendation in Issue 1, then no further action is necessary and the docket should be closed.