

State of 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-

DATE: November 2, 2018

TO: Carlotta S. Stauffer, Commission Clerk, Office of Commission Clerk
Adam J. Teitzman, Commission Clerk, Office of Commission Clerk

FROM: Margo A. DuVal, ^{ms} Senior Attorney, Office of the General Counsel

RE: Docket No. 20180142-WS - Initiation of show cause proceedings against Palm Tree Acres Mobile Home Park, in Pasco County, for noncompliance with Section 367.031, F.S., and Rule 25-30.033, F.A.C.

Please file the attached letter from the Florida Manufactured Housing Association, Inc., dated May 4, 2018, and the attached letter from the Federation of Manufactured Home Owners of Florida, Inc., dated May 21, 2018, in the correspondence section of the docket file for Docket No. 20180142-WS.

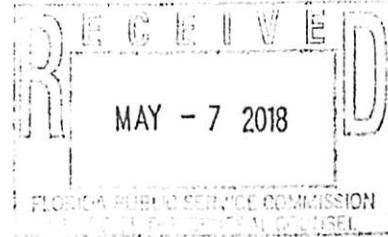


**Florida Manufactured
Housing Association, Inc.**

May 4, 2018

Via US Mail *and* email to khetrick@psc.state.fl.us

Keith Hetrick
General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399



Dear Mr. Hetrick:

As Executive Director of the Florida Manufactured Housing Association (the "FMHA"), I write to you to express concerns over what appears to be the Florida Public Service Commission staff's narrow interpretation of the "landlord exemption" of Section 367.022(5), Florida Statutes. The FMHA was contacted by a member on this issue, the owners of Palm Tree Mobile Home Park ("Palm Tree"), which is a mobile home park and a mobile home subdivision. After conferring with our counsel, we are concerned that the Commission staff's interpretation of this exemption has the effect of excluding many mobile home parks and mobile home subdivisions from the benefits of the exemption. It would also mean that the Commission would be responsible for regulating our member communities as "new" utilities under this erroneous interpretation. We find no authority suggesting that the legislature intended to deny the Section 367.022(5) exemption to our member owners, operators, or developers of mobile home parks or mobile home subdivisions.

Section 367.022(5), Florida Statutes, exempts "landlords" from Commission utility regulation if the landlord provides water or wastewater "service to their tenants without specific compensation." After reviewing Commission staff's correspondence with Palm Tree, it appears that staff is looking solely to the definitions of landlord and tenant in Chapter 83, Florida Statutes, to determine the applicability of this exemption. Under Chapter 83, a "landlord" is one that owns or leases a "dwelling unit"—a definition which does not include a mobile home lot. Section 83.43(2), (3), (4), Florida Statutes.

For decades, many owners of mobile home parks and developers of mobile home subdivisions have relied upon the self-effectuating landlord-tenant exemption to provide water and wastewater services to their tenants. These owners and developers do not rent "dwelling units" as described in Section 83.43(2). Rather, mobile home park owners rent mobile home lots for the placement of a mobile home; and mobile home subdivision developers rent lot owners access to common areas, recreational facilities, roads, and other amenities. Although those park owners and mobile home subdivision developers may not technically meet the definition of "landlord" in section 83.43(3), they are considered landlords for the purposes of the Florida Mobile Home Act, Chapter 723, Florida Statutes (the "Act"). Please understand that tenancies in mobile parks and mobile home subdivisions fall within the purview of the Act rather than Chapter 83. As expressed in Section 723.004(3), Florida Statutes, the Act is the exclusive regulatory scheme applicable to our members when it comes to landlord-tenant relationships:

Keith Hetrick
General Counsel
Florida Public Service Commission
May 4, 2018
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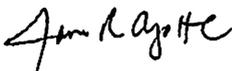
723.004 Legislative intent; preemption of subject matter.—

(3) It is expressly declared by the Legislature that the relationship between landlord and tenant as treated by or falling within the purview of this chapter is a matter reserved to the state and that units of local government are lacking in jurisdiction and authority in regard thereto. All local statutes and ordinances in conflict herewith are expressly repealed.

By relying solely on the definitions of landlord and tenant found in Chapter 83, Florida Statutes, the Commission staff is excluding mobile home park owners and subdivision developers from the protections of section 367.022(5), Florida Statutes, and exposing many of our members to costly and unnecessary utility regulation, as well as exposing our members to higher utility costs. Moreover, we are very concerned that the Commission would be acting without authority if it denies our members the important protections that the exemption affords.

On behalf of the FMHA, we are asking that the Commission staff closely consider the fact that ignoring landlord-tenant relationships found in Chapter 723 has far-reaching implications that could adversely affect mobile home parks and mobile home subdivisions throughout our state. Given the industry-wide implications, if the Commission staff is inclined to limit the landlord-tenant exemption only to landlords and tenants as defined under Chapter 83, it must consider rulemaking so that the industry may weigh in on this significant issue. We also anticipate that the tenant's organization, The Federation of Mobile Home Owners, will likewise object to an interpretation that results in greater utility costs to its member tenants.

Sincerely,



James R. Ayotte
Executive Director, FMHA

cc: Lori Killinger via email, lkillinger@llw-law.com

LEE JAY COLLING & ASSOCIATES, P.A.

ATTORNEYS AT LAW

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PARALEGALS / LEGAL ASSISTANTS
NADINE S. COLLING
IRIS F. WALKER, FRP

May 21, 2018

Keith Hetrick
General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32390

Dear Mr. Hetrick:

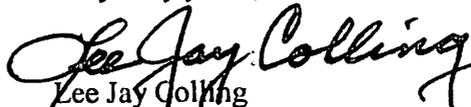
This Law Firm represents the Federation of Manufactured Home Owners of Florida, Inc. ("FMO"), which has requested that we write you on its behalf regarding what appears to be a very narrow interpretation by the Commission staff of Section 367.022(5), Florida Statutes. It also appears that this interpretation would have the apparent effect of excluding Chapter 723 mobile home parks from the benefits of the exemption from regulation by the Commission.

We have reviewed the letter to you from the Florida Manufactured Housing Association, Inc. ("FMHA"), dated May 7, 2018 regarding this matter, and agree and endorse the statements and opinions set forth therein.

FMO is the largest nonprofit Association representing mobile home owners in the state and has a very pertinent interest in this issue. It is our belief that the exclusion from exception by the Commission would be arbitrary and inconsistent as applied to Chapter 723 mobile home parks and the tenants of those parks, which would result in unwarranted regulation and unnecessary costs for our members.

We would appreciate your consideration in this matter.

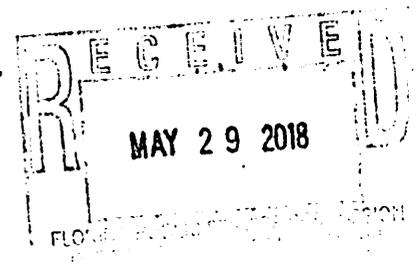
Very truly yours,


Lee Jay Colling
FMO Legal Counsel

LJC/ifw

cc: Jerry Durham, President
Federation of Manufactured Home Owners of Florida, Inc. ("FMO")

"AV" RATED BY MARTINDALE-HUBBELL
Member - Bar Registry of Preeminent Lawyers



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