

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for exemption) DOCKET NO. 941321-WU
from Florida Public Service) ORDER NO. PSC-95-0379-POF-WU
Commission regulation for) ISSUED: March 17, 1995
provision of water service in)
Clay County by ALLEN'S)
AUTOMOTIVE.)
_____)

ORDER INDICATING NONJURISDICTIONAL STATUS
OF ALLEN'S AUTOMOTIVE AND CLOSING DOCKET

BY THE COMMISSION:

On December 21, 1994, Allen's Automotive (Allen's) filed an application with this Commission for recognition of its exempt status, pursuant to Section 367.022(5), Florida Statutes. Allen's is an auto repair business located at the corner of County Road 209 and US Highway 17, Green Cove Springs, Florida. Mr. Ron Allen, who is the owner and primary contact person, filed the application on behalf of Allen's.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater systems, if they qualify under the appropriate provision of Chapter 367, Florida Statutes. The application was filed in accordance with Section 367.022(5), Florida Statutes. Section 367.022(5), Florida Statutes, states that an entity qualifies for exemption from Commission regulation if it provides service solely to its tenants, and there are no specific charges for the utility service.

Upon review of the application, it was determined that Allen's more properly qualifies for nonjurisdictional status, pursuant to Section 367.021(12), Florida Statutes. Section 367.021(12), Florida Statutes, states that a "utility means a water or wastewater utility and, except as provided in Section 367.022, Florida Statutes, includes every person, lessee, trustee, or receiver owning, operating, managing, or controlling a system, or proposing construction of a system, who is providing, or proposes to provide water or wastewater service to the public for compensation."

On March 6, 1995, Allen's refiled its application requesting recognition of its nonjurisdictional status, pursuant to Section 367.021(12), Florida Statutes. According to Allen's application, water service is provided solely to its auto repair business, its water service is provided by a well, and there is no charge for

providing the water service because all costs of providing the service are treated or recovered as operational expenses. Wastewater service is provided by a septic tank.

In addition, pursuant to Section 837.06, Florida Statutes, and Rule 25-30.060(2)(f), Florida Administrative Code, anyone knowingly making a false statement in writing with the intent to mislead is guilty of a misdemeanor. By signing the application, Allen's acknowledged that it is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.

Based on the facts as represented, we find that Allen's is not a utility pursuant to the provisions of Section 367.021(12), Florida Statutes. Accordingly, Allen's is not subject to this Commission's jurisdiction. However, should there be any change in circumstances or method of operation, the owner of Allen's, or any successors in interest, must inform the Commission within 30 days of such change so that its nonjurisdictional status may be reevaluated.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Allen's Automotive is not a water utility subject to this Commission's jurisdiction, pursuant to the provisions of Section 367.021(12), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation, the owner of Allen's Automotive, or any successors in interest, shall inform this Commission within 30 days of such change so that we may reevaluate Allen's Automotive's nonjurisdictional status. It is further

ORDERED that this Docket is hereby closed.

By ORDER of the Florida Public Service Commission, this 17th day of March, 1995.

BLANCA S. BAYO, Director
Division of Records and Reporting

by: Kay Hays
Chief, Bureau of Records

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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 and/or wastewater 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.