

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Resolution of the Board) DOCKET NO. 951235-WS
of County Commissioners of) ORDER NO. PSC-97-0111-FOF-WS
Manatee County declaring Manatee) ISSUED: January 28, 1997
County subject to the provisions)
of Chapter 367, F.S. -- Request)
for exemption for provision of)
water and wastewater service by)
Golf Lakes Residents)
Association, Inc.)
_____)

The following Commissioners participated in the disposition of this matter:

JULIA L. JOHNSON, Chairman
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING

ORDER GRANTING GOLF LAKES RESIDENTS ASSOCIATION,
INC. EXEMPTION FOR PROVISION OF WATER AND WASTEWATER TO
MEMBERS AND ACKNOWLEDGING ITS NONJURISDICTIONAL STATUS FOR
PROVISION OF SERVICE TO NON-MEMBERS WITHOUT COMPENSATION

BY THE COMMISSION:

On November 29, 1995, Golf Lakes Residents Association, Inc. (Golf Lakes or Association) filed a request for recognition of its exempt status, pursuant to Section 367.022(7), Florida Statutes. Mr. Michael A. Gist, Manager, and primary contact person filed the application on behalf of Golf Lakes. By signing the application, Mr. Gist acknowledged that he is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.

Golf Lakes is a homeowners association which receives bulk water and wastewater service from Manatee County. The Association oversees the operation of the transmission and collection system that serves homeowners in the community of Golf Lakes Mobile Home Park in Manatee County. The mobile home park currently has 780 units; 760 of the units are members of the association. The members are billed quarterly maintenance fees and the non-members are billed for rent each month, but remit no compensation for utility service.

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FPSC-RECORDS/REPORTING

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(7), Florida Statutes.

Section 367.022(7), Florida Statutes, states that nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit entities are exempt from Commission regulation. Before an exemption of this nature may be granted, the applicant requesting the exemption must file with the Commission a statement specifying the following: that the corporation is nonprofit; providing service solely to the members who own and control it; whether it provides water service, wastewater service, or both; and who will do the billing. Additionally, the applicant must submit its Articles of Incorporation as filed with the Secretary of State and its Bylaws. These documents must show clearly the requirements of membership, the members' voting rights, and the circumstances under which control passes to the nondeveloper members.

In its application, Golf Lakes stated that it is a nonprofit corporation organized pursuant to Section 617, Florida Statutes. The Association's Articles 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 percent membership owned and operated.

Although Golf Lakes provided a statement that they intended to provide service solely to members who own and control the Association, twenty units of the 780 total lots within the Golf Lakes Mobile Home Park are owned by the Association and are leased to non-members. Golf Lakes 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 non-members, it is not receiving compensation for such service.

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 service without compensation to a non-member. We answered the question in the affirmative by Order No. 23897, issued December 18, 1990. In that order, we exempted Central Lake from regulation and specifically stated:

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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.

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 members. By Order No. PSC-95-1436-FOF-WU, issued on November 27, 1995, we granted Montpelier's exemption application and acknowledged its nonjurisdictional status for provision of service to a nonmember without compensation.

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 non-members 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 facts as represented, we find that Golf Lakes is exempt from our regulation pursuant to Section 367.022(7), Florida Statutes, for service to its members. We further acknowledge that provision of water and wastewater service to non-members without compensation is non-jurisdictional pursuant to Section 367.021(12), Florida Statutes. However, the owner of the Association or any successors in interest are put on notice that if there is any change in circumstance 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.

Based on the foregoing, it is

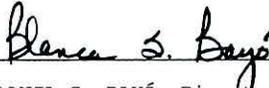
ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Golf Lakes Residents Association, Inc., 5050 5th Street East, Bradenton, Florida 34203, is hereby exempt from Commission regulation pursuant to the provisions of Section 367.022(7), Florida Statutes, for provision of water and

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wastewater service to its members. We further acknowledge that Golf Lakes Residents Association, Inc.'s provision of service to non-members without compensation is nonjurisdictional pursuant to Section 367.021(12), Florida Statutes. It is further

ORDERED that this docket shall remain open to process additional applications.

By ORDER of the Florida Public Service Commission, this 28th day of January, 1997.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, 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.