

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Initiation of show cause) DOCKET NO. 940254-WU
proceedings against AIR BASE) ORDER NO. PSC-94-1530-FOF-WU
MOTOR COURT for operating a) ISSUED: December 12, 1994
water system in Duval County)
without a certificate.)
_____)

The following Commissioners participated in the disposition of this matter:

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

ORDER INDICATING EXEMPT STATUS OF UTILITY AND CLOSING DOCKET

BY THE COMMISSION:

Pursuant to Section 367.022(5), Florida Statutes, and Rule 25-30.060(3)e), Florida Administrative Code, on September 12, 1994, Air Base Motor Court (ABMC) filed for a landlord/tenant exemption. Mr. Waldo Stockton is the Managing Partner and Owner of ABMC. Ms. Patricia Johnson is the contact person for ABMC. ABMC is a utility located in Duval County providing water service to the Azalea Mobile Home Park (Azalea) and a strip shopping center.

ABMC owns a water well that services a strip shopping center. ABMC also owns the strip shopping center. The strip shopping center pays for water service through its monthly rent. We learned about ABMC after Azalea informed the Commission staff that ABMC had increased Azalea's water rate to the mobile home park, without notice, from \$280 to \$650 per month. The Commission staff contacted ABMC and learned from ABMC that it did not consider itself to be a utility. ABMC also stated that the increased charge was not an increase in utility charges, but a rental increase. ABMC has maintained that it is not a utility because it leases the facilities providing water service to the mobile home park to Azalea. AMBC further states that while it owns the strip shopping center, it has a landlord/tenant relationship with the shopping center since its water service comprises a non-specific portion of its rental agreement.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

During the May 3, 1994, agenda conference, this Commission considered ABMC's arguments that it was not a utility. ABMC provided documentation supporting its assertion that it was not a utility and not subject to the Commission's jurisdiction. However, ABMC's statements and documents contradicted Azalea's letters and oral statements that Azalea had previously presented to the Commission staff. These documents show that although ABMC and Azalea disagree about the lease's terms and conditions, they agree that they have an oral lease.

Based on the facts presented during the agenda conference, we determined that a signed lease incorporating the parties' oral agreement would allow us to make a more informed decision about ABMC's status. Accordingly, on May 23, 1994, by Order No. PSC-94-0611-FOF-WU, we gave ABMC six months to obtain either a written lease with Azalea, obtain water service from the City, or if it could not comply with these options, apply for a certificate to provide water service. Regarding the City of Jacksonville's (City) water service, ABMC and the Commission staff have confirmed that the City still plans to provide water service to the area that ABMC now services. But, the City has delayed its connection date for providing water service until June 1995.

On June 8, 1994, ABMC filed a Motion for Reconsideration of Order No. PSC-94-0611-FOF-WS. By Order No. PSC-94-1155-FOF-WU, issued September 20, 1994, we denied ABMC's motion since we did not make any mistake as to fact or law. Therefore, ABMC remained subject to the provision of Order No. PSC-94-0611-FOF-WU. On September 12, 1994, pursuant to Section 367.022(5), Florida Statutes, ABMC filed an application for a landlord/tenant exemption.

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. As stated earlier, on September 12, 1994, ABMC filed its application in accordance with Section 367.022(5), and Rule 25-30.060(3)(e), Florida Administrative Code.

ABMC's application contains a statement by Waldo Stockton, Managing Partner, that ABMC provides water service solely to its tenants, that its rental charges contain a non-specific portion for providing water service, and the system provides water service only. ABMC's application contains a description of its service area which is located at 6000 Roosevelt Boulevard in Duval County. ABMC's application also contains a copy of its most recent standard lease with the tenants of the strip center.

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Pursuant to Section 367.022(5), Florida Statutes, landlords will not be subject to the Commission jurisdiction if they provide water or wastewater service to their tenants without specific compensation. ABMC has stated that it provides water service to the strip shopping center and the mobile home park without specific compensation. Since the relationship between ABMC and its tenants meets the criteria for a landlord/tenant exemption, we find it appropriate to grant ABMC's landlord/tenant exemption request.

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, Mr. Stockton acknowledged that he 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 ABMC is exempt from the Commission jurisdiction pursuant to Section 367.022(5), Florida Statutes. However, should there be any change in circumstances or method of operation, the owner of ABMC, or any successors in interest, shall inform the Commission within 30 days of such changes so that its exempt status may be reevaluated.

It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the foregoing facts, Air Base Motor Court, is exempt from the Commission regulation, pursuant to the provisions of Section 367.022(5), Florida Statutes. It is further

ORDERED that should there be any change in circumstances or method of operation, the owner of Air Base Motor Court, or any successors in interest, shall inform this Commission within 30 days of such changes or method of operation so that its exempt status may be reevaluated. It is further

ORDERED that Docket 940254-WU is hereby closed.

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By ORDER of the Florida Public Service Commission, this 12th
day of December, 1994.

BLANCA S. BAYÓ, Director
Division of Records and Reporting

by: Kay Flynn
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 Civil Procedure. The notice of appeal must be in the form specified in Rule 9.900 (a), Florida Rules of Appellate Procedure.