

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution by Board of Sumter) DOCKET NO. 870060-WS
County Commissioners declaring Sumter)
County subject to jurisdiction of the) ORDER NO. 20577
Florida Public Service Commission)
_____) ISSUED: 1-9-89

The following Commissioners participated in the disposition of this matter:

KATIE NICHOLS, Chairman
THOMAS M. BEARD
GERALD L. GUNTER
JOHN T.HERNDON
MICHAEL MCK. WILSON

ORDER INDICATING THE EXEMPT
STATUS OF BUSHNELL RRH, LTD.

BY THE COMMISSION:

On January 13, 1987, the Board of County Commissioners of Sumter County adopted a resolution, pursuant to Section 367.171, Florida Statutes, transferring jurisdiction over privately owned water and sewer utilities in Sumter County to the Florida Public Service Commission. By Order No. 17207, issued February 18, 1987, this Commission acknowledged the transfer of jurisdiction and directed all persons providing water and/or sewer service in Sumter County to register with the Commission for review of their jurisdictional status.

Under Section 367.021(3), Florida Statutes, "[u]tility' means a water or sewer utility and, except as provided in s. 367.022, 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 sewer service to the public for compensation." Pursuant to Section 367.022, Florida Statutes, eight categories of utilities are specifically exempt from this Commission's regulation.

Bushnell RRH, Ltd. (Bushnell) is a limited partnership that owns and operates a federally subsidized rural rental housing project in Sumter County. In addition, Bushnell provides sewer service to the housing project. Bushnell is financed by the United States Department of Agriculture, Farmers Home Administration (FHA), and is, therefore, subject to the regulation of that agency. In order to qualify for such financing, FHA requires that:

1. Each tenant's total rent and utility payments equal no more than thirty percent (30%) of his or her adjusted gross monthly income, and;
2. Bushnell's profits from this venture not exceed eight percent (8%) of its total investment, including its investment in the sewage treatment facility.

Bushnell is required to verify its compliance with the above requirements no less than once per year.

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

In addition to serving the needs of Bushnell's tenants, the sewage treatment plant also provides service to a shopping center, which is contiguous to the housing project. Pursuant to an August 26, 1983 agreement between Bushnell and the shopping center, the shopping center financed sixty percent of the construction of the plant, based upon the parties' respective projected usage. In return, the shopping center was granted an express, irrevocable license to use the treatment plant. An express license to do something, coupled with the right to do that thing, amounts to an easement, which is a legally cognizable property interest. Bushnell would be unable, therefore, to unilaterally terminate the shopping center's interest.

In addition, Bushnell does not charge rates, as such, for the shopping center's usage of the sewer plant. Pursuant to the August 26, 1983 agreement, the shopping center pays sixty percent of the operation and maintenance costs, also based upon the parties' respective projected usage.

Since FHA limits Bushnell's return to no more than eight percent of its total investment and since Bushnell would be unable to unilaterally terminate the agreement for the shopping center's usage of the plant, we find that this utility is exempt from regulation by this Commission pursuant to Section 367.022(2), Florida Statutes, as a system controlled by a governmental agency. However, should there be any change in circumstances or method of operation, Bushnell, or its successor(s) in interest, must inform this Commission within thirty days of such change so that we may determine whether exempt status is still appropriate.

It is, therefore,

ORDERED by the Florida Public Service Commission that Bushnell RRH, Ltd. is exempt from the regulation of this Commission pursuant to Section 367.022(2), Florida Statutes, as a system controlled by a governmental agency. It is further

ORDERED that, should there be any change in circumstances or method of operation, Bushnell RRH, Ltd., or its successor(s) in interest, shall inform this Commission within thirty (30) days of such change so that we may determine whether exempt status is still appropriate.

By ORDER of the Florida Public Service Commission,
this 9th day of JANUARY, 1989.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

by: Kay Flynn
Chief, Bureau of Records