

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for Exemption from FPSC)	DOCKET NO. 900459-WS
Regulation for water and sewer plants)	ORDER NO. 23608
in Collier County by Randall Boulevard)	ISSUED: 10-12-90
Center)	
)	

ORDER INDICATING THE EXEMPT STATUS OF
RANDALL BOULEVARD CENTER

BY THE COMMISSION:

Donald George Cannon is the owner/developer of a proposed five acre retail shopping complex in Collier County to be known as Randall Boulevard Center. Mr. Cannon proposes constructing both water and wastewater systems to serve the tenants of the complex.

Pursuant to Section 367.031, Florida Statutes, a utility must obtain a certificate of authorization to provide water or wastewater service or an order recognizing that the system is exempt from regulation. The Section also states that a utility must obtain a certificate prior to being issued a permit by the Department of Environmental Regulation (DER). Therefore, by letter and affidavit received May 9, 1990, Donald George Cannon, as owner of Randall Boulevard Center, (applicant) requested that the Commission recognize its exempt status.

Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or sewer facilities, if they qualify under the appropriate section of Chapter 367, Florida Statutes. The applicant requested recognition of its exempt status under Section 367.022(5), Florida Statutes.

The affidavit and letter show that: Donald George Cannon is the owner/developer of a proposed five acre retail shopping complex to be known as Randall Boulevard Center; Randall Boulevard provides water and wastewater service solely to its tenants; Randall Boulevard Center does not collect any specific charge for water or wastewater service from its tenants, as those charges are nonspecifically included in the tenants' monthly rents; and the water and wastewater facilities are located on-site.

Section 367.022(5), Florida Statutes, states that landlords providing service to their tenants without specific compensation for the service are exempt from Commission regulation. When the lease agreement is a so-called "triple-net" lease, as is often the case with commercial properties, the meaning of "without specific compensation" can be blurred. However, in the past, the Commission

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has granted an applicant's request for exemption only if the triple-net lease met the following conditions: (1) The lease did not itemize the utility service provided by the landlord as an expense which the tenant had to pay for as part of the rent, whether the amount therefor was based on usage or otherwise, and (2) The lease did not designate the landlord's utility systems as common facilities for which the tenant had to pay a portion of the operating costs.

Based upon the facts which the applicant has represented, we find that Randall Boulevard Center is exempt from our regulation under the terms of Section 367.022(5), Florida Statutes. However, since the applicant has not submitted a form lease or a proposed form lease for our review, as is normally required, the applicant shall submit such a lease once one is put into final form. Also, should there be any change in the exemptee's circumstances or method of operation, the owner of Randall Boulevard Center, or any successor in interest, must inform the 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, based upon the facts as represented, Randall Boulevard Center, located at the southwest corner of the intersection of Immokalee and Randall Boulevard, Naples, FL 33940, is hereby exempt from Commission regulation pursuant to the terms of Section 367.022(5), Florida Statutes. It is further

ORDERED that should there be any change in the circumstances or method of operation of Randall Boulevard Center's water and wastewater facilities, the owner of Randall Boulevard Center, or any successor in interest, shall inform the Commission within thirty days of such change. It is further

ORDERED that the owner of Randall Boulevard Center shall file with the Commission within thirty days from the date of this Order a form lease or a proposed form lease. It is further

ORDERED that this docket be closed.

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By ORDER of the Florida Public Service Commission, this 12th
day of OCTOBER, 1990.



STEVE TRIBBLE, 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 120.59(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 or sewer 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.