

State of Florida

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Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

DATE: January 25, 1995
TO: DIVISION OF LEGAL SERVICES (EDMONDS)
 DIVISION OF RECORDS AND REPORTING
FROM: DIVISION OF WATER AND WASTEWATER (MASSEY-AZPELL) *AMA*
RE: DOCKET NO. 941044-WS; RESOLUTION OF BOARD OF COMMISSIONERS
 OF CHARLOTTE COUNTY DECLARING CHARLOTTE COUNTY SUBJECT
 TO THE PROVISIONS OF CHAPTER 367, FLORIDA STATUTES -
 REQUEST FOR EXEMPTION FOR PROVISION OF WATER AND
 WASTEWATER SERVICE BY EL JOBEAN WATER ASSOCIATION, INC.

Please include the attached documentation in the above referenced docket file. If you have any additional questions, please do not hesitate to give me a call. Thanks.

- ACK _____
- AFA _____
- APP _____
- CAF _____
- CMU _____
- CTR _____
- EAG _____
- LEG _____
- LIN _____
- OPC _____
- ROH _____
- SEC 1 _____
- WAS _____
- OTH _____

DOCUMENT NUMBER-DATE
 00927 JAN 25 95
 FPSC-RECORDS/REPORTING

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January 23, 1995

Angela Massey-Azpell
Staff Assistant
Division of Water and Wastewater
Florida Public Service Commission
101 East Gaines Street
Tallahassee, Florida 32399

Re: Docket No. 941044-WS; Resolution of Board of Commissioners of Charlotte County declaring Charlotte County subject to the provisions of Chapter 367, Florida Statutes - Application of EL JOBEAN WATER ASSOCIATION, INC., for an order recognizing its exemption from Commission regulation.
Our File No. 27029.09

Dear Ms. Massey-Azpell:

Thank you for your letter of January 12, 1995. I received it on January 20th.

It may be helpful to quickly peruse the style of our pleadings in this case and the language in Section 367.031, Florida Statutes. The application follows the language in the statute, which is a request for "an order recognizing that the system is exempt from regulation." El Jobean isn't requesting an exemption; it's exempt from PSC regulation.

As to the question raised by paragraph 1, please understand that El Jobean Water Association, Inc., does in fact own a system, as defined by §367.021(11), Florida Statutes, 1993, but does not own any water treatment facilities. The water which El Jobean provides to its members is purchased from Charlotte County.

The matter in paragraph 2 puzzles me somewhat. I don't know of any statute or rule, applicable to the Florida Public Service Commission, which requires that El Jobean's Bylaws be filed with the Charlotte County Clerk.

As to paragraph #3, the "turnover of control" is applicable to those associations created by developers in which the developer owns and controls the non-profit corporation from its inception, until the time that a certain number of non-developer members join and take over control.

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Ms. Angela Massey-Azpell

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January 23, 1995

El Jobean Water Association is simply not an association of the type to which that portion of the rule refers. It is owned, operated, managed and controlled solely by its members, all of whom are customers.

Paragraph #4 - El Jobean does not provide wastewater service. Its Bylaws empower it to do so, in the event that it decides to. To date, it has not elected to enter into that activity.

Paragraph #5 - The provisions of the Bylaws are not in conflict with the definition in Paragraph 617.01401(5), Florida Statutes, 1993. A former member is not a member. There is no conflict.

As I understand the reason for this language in the Bylaws, it is that El Jobean, like other water systems, may some time in the future be acquired by a political subdivision for value. It would then cease to exist, and would distribute its earnings from the sale to its former members. Evidently the founders thought to protect whatever right a former member may have at that point, by the inclusion of this language. I think it is evident that a person who was a member for a few weeks just prior to dissolution may have a lesser right to the proceeds of distribution, as compared with someone who was a member from inception to a few weeks before the Association's dissolution which resulted from a sale of its assets.

If you have any questions, please don't hesitate to contact me.

Sincerely yours,



Robert M.C. Rose, P.A.
For the Firm

RMCR/jbe

cc: Mr. Ray Stillwagon
Mr. Thad Smith