

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Resolution by BOARD OF SUMTER) DOCKET NO. 870060-WS
COUNTY COMMISSIONERS declaring Sumter) ORDER NO. 23150
County subject to jurisdiction of) ISSUED: 7-5-90
Florida Public Service Commission)
_____)

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
BETTY EASLEY
GERALD L. GUNTER
FRANK S. MESSERSMITH

ORDER INDICATING THE EXEMPT STATUS
OF FLORILOW, INC.

BY THE COMMISSION:

On January 15, 1987, the Board of County Commissioners of Sumter County adopted a resolution, pursuant to Section 367.171, Florida Statutes, declaring all privately owned water and wastewater utilities in Sumter County subject to the jurisdiction of this Commission. By Order No. 17207, issued February 18, 1987, we acknowledged the jurisdictional transfer and directed all persons providing water and/or wastewater service in Sumter County to register with the Commission for review of their regulatory status.

On April 29, 1988, Florilow, Inc. (Florilow) requested that we find it exempt from our regulation under either Section 367.022(5) or (6), Florida Statutes. By Order No. 21203, issued June 1, 1989, we proposed to reject Florilow's request that it be found exempt. On June 20, 1989, Florilow filed a protest to Order No. 21203. Pursuant to Florilow's protest, this matter was set for an administrative hearing on April 11, 1990.

On February 12, 1990, Florilow prefiled its direct testimony and exhibits. Following its review of Florilow's testimony, the Staff of this Commission (Staff) suggested that, since there did not appear to be any issues of material fact in controversy in this case, it might be appropriate to process this case under Section 120.57(2), Florida Statutes. For the same reason, Staff suggested that Florilow request that the hearing be cancelled and that we consider this matter solely

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

ORDER NO. 23150
DOCKET NO. 870060-WS
PAGE 2

upon its prefiled testimony. By letter dated March 20, 1990, Florilow agreed to process this matter under Section 120.57(2), Florida Statutes, and requested that we consider the case based solely upon its prefiled testimony. Accordingly, by Order No. 22738, issued March 27, 1990, the hearing and prehearing conference were cancelled.

Florilow was originally formed in 1983 in order to purchase Oak Haven Estates, a mobile home and recreational vehicle park. Following the purchase, the name of the park was changed to Florilow Oaks. Florilow Oaks consists of a total of 121 sites. All except 37 of these sites are rented on a daily, weekly or monthly basis, at varying fees which do not specifically include charges for water or wastewater service. The remaining 37 lots are rented pursuant to 99-year leases. The 99-year lease agreements also provide that, as additional consideration for entering into the leases, the lessees agree to pay a separate maintenance fee, which represents the lessees' "proportionate share of the costs of maintenance of the park's sewage plant, water system, roads, taxes, and garbage service . . ."

In its testimony, Florilow argues that it is exempt pursuant to Section 367.022(5), Florida Statutes, the landlord-tenant exemption. Florilow also argues that, if we find that it is subject to our regulation, complying with our regulations would place an undue burden on it.

According to Florilow, its staff consists of a part time manager and a part time maintenance man. Florilow argues that it employs a very simple accounting system and that regulation by this Commission would require it to hire a bookkeeper and institute a more sophisticated accounting system. In addition, Florilow asserts that it is not equipped to prepare annual reports. Florilow also argues that Florilow Oaks is not metered and that it does not presently have a billing and collection system. Florilow further argues that, if we determine that it is subject to our regulation, it would have to determine, collect, and pay regulatory assessment fees. Florilow contends that all of the above requirements would result in additional costs to the lessees with no commensurate benefit to them.

Florilow also prefiled the testimony of one of the 99-year lessees in support of its position. According to the lessee, all of the leaseholders believe that the maintenance fee is fair and reasonable. In support of his claim, he sponsored a petition, signed by all of the 99-year lessees, objecting to any increase in costs which would result from Florilow being subjected to our regulation. The lessee also explained that, if Florilow were to propose an increase in the maintenance fee in order to comply with the above requirements, he and the other lessees would request a conference with the Board of Directors to discuss the justification for the increase. If they were not satisfied with the outcome of that meeting, he believes that their contract rights would be adequately protected by arbitration or mediation under Chapter 723, Florida Statutes, or through the courts.

Under Section 367.022(5), Florida Statutes, "[l]andlords providing service to their tenants without specific compensation for the service" are exempt from the Commission's regulation. Thus, if a landlord provides water and/or wastewater services and does not specifically charge for, but includes such services as, nonspecific portions of the overall rent charges, the landlord is exempt from the Commission's regulation, whether or not the provision of such services is identified in the rental agreement. In past decisions, however, we have held that, if these services are enumerated in a separate maintenance agreement, the landlord is not exempt, regardless of whether the maintenance agreement identifies any specific charge for such services. Upon further reflection, we do not believe that Section 367.022(5), Florida Statutes, requires that the services be included in rental charges; it only requires that the services be provided without specific compensation therefor. We believe that this interpretation is consistent with the protection inherent in the landlord-tenant exemption; if a tenant is dissatisfied with a maintenance agreement, as with a rental agreement, he or she can move to another residence. We also believe that the 99-year lessees discussed herein are adequately protected under Chapter 723, Florida Statutes.

Based upon the discussion above, we find that Florilow is exempt from our regulation under the landlord-tenant exemption, Section 367.022(5), Florida Statutes, as a landlord providing service without specific compensation. However, should there be any change in circumstances or method of operation,

ORDER NO. 23150
DOCKET NO. 870060-WS
PAGE 4

Florilow, or its successor(s) in interest, shall inform this Commission within thirty days of such change so that we may reevaluate its regulatory status.

It is, therefore,

ORDERED by the Florida Public Service Commission that Florilow, Inc. is exempt from the regulation of this Commission pursuant to the landlord-tenant exemption, Section 367.022(5), Florida Statutes, as a landlord providing service without specific compensation. It is further

ORDERED that, should there be any change in the circumstances or method of operation, Florilow, Inc., or its successor(s) in interest, shall inform this Commission within thirty (30) days of such change so that we may reevaluate its regulatory status. It is further

ORDERED that Docket No. 870060-WS be and is hereby closed.

By ORDER of the Florida Public Service Commission
this 5th day of JULY, 1990.

STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

RJP

by: Kay Flynn
Chief, Bureau of Records

Commissioner Gerald L. Gunter, dissenting:

Although I can see that it might be expedient to exempt this particular system, I do not believe that this decision sets a good precedent. While these long-term lessees might be satisfied with their maintenance fee arrangements, it is likely that, at some point, we will be faced with a situation wherein a tenant is held captive by a long-term lease, but is not

ORDER NO. 23150
DOCKET NO. 870060-WS
PAGE 5

protected by Chapter 723, Florida Statutes. In the face of spiralling maintenance fee costs, we might be that tenant's only protection. Further, since Florilow could rearrange its operations to qualify for the nonprofit corporation exemption, I believe that we should reject its request for the landlord-tenant exemption. I, therefore, respectfully dissent from this decision of the Commission.

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.