

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Request for exemption from)	DOCKET NO. 910692-WU
Florida Public Service Commission)	ORDER NO. 25460
regulation for a water system in Lake)	ISSUED: 12/10/91
County by WEDGEWOOD HOMEOWNERS)	
ASSOCIATION, INC.)	
)	

The following Commissioners participated in the disposition of this matter:

THOMAS M. BEARD, Chairman
 SUSAN F. CLARK
 J. TERRY DEASON
 BETTY EASLEY
 MICHAEL MCK. WILSON

ORDER GRANTING EXEMPTION

BY THE COMMISSION:

Background

In 1988, Mr Herbert Stenger, the developer of the Wedgewood subdivision in Lake County, Florida, constructed a small water system designed to serve the initial 150 home phase of the subdivision. Additional development phases are anticipated. By Order No. 18905, issued February 8, 1988, this Commission found that the Wedgewood system was non-jurisdictional in reliance on Mr. Stenger's representation that he would not charge for utility service. Mr. Stenger also indicated that the utility would be turned over to the Wedgewood Homeowners Association, Inc., (WHA) upon sale of fifty percent of the lots.

In March, 1989, Mr. Stenger sold the Wedgewood system to Southern States Utilities, Inc. (SSUI). In response to SSUI's notice of transfer application, WHA filed a protest to the proposed transfer and the Office of Public Counsel intervened in the proceeding. Prior to the matter being considered at a formal hearing, the dispute was settled. Pursuant to the settlement agreement, which this Commission approved in Order No. 24317, issued April 16, 1991, SSUI withdrew its transfer application and conveyed the water system back to Mr. Stenger. The order required Mr. Stenger to file either a certificate or exemption application within ninety days of the date of the order. On May 15, 1991, Mr. Stenger sold the water system to WHA who, in turn, filed the instant exemption request on June 19, 1991.

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FPSC-RECORDS/REPORTING

ORDER NO. 25460
DOCKET NO. 910962-WU
PAGE 2

Pursuant to Section 367.031, Florida Statutes, before the Department of Environmental Regulation will issue a construction permit and before a water management district will issue a consumptive use or drilling permit, a utility must first obtain from the Commission a certificate of authorization service or proof that the utility is not subject to Commission regulation. Upon request and sufficient proof, the Commission will issue an order indicating the nonjurisdictional or exempt status of water or wastewater facilities which qualify under the appropriate section of Chapter 367, Florida Statutes.

Exemption Request

WHA requested that it be found exempt pursuant to Section 367.022(7), Florida Statutes. Under this section, "[N]onprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations or cooperatives" are exempt from Florida Public Service Commission regulation.

In an affidavit dated June 14, 1991, the president of WHA avers that WHA is a nonprofit corporation organized pursuant of Chapter 617, Florida Statutes, that WHA will provide service solely to its members who own and control it, and that WHA will provide only water service for which it will provide its own billing.

To support its representations, WHA filed its articles of incorporation, bylaws, and deed to the water plant site. According to Article V of WHA's Articles of Incorporation, any person who owns a lot or dwelling unit in the development is a member of the association. WHA's Bylaws state that voting rights were initially divided between two classes of members, class A and class B members. Class B membership was reserved solely for the developer. Upon the sale of ten lots, class B membership would cease and be converted to class A membership. Class A membership was defined as all members other than the developer. Upon expiration of class B membership, each class A member is to be entitled to one vote per lot. On October 1, 1991, Mr. Stenger, the developer of the Wedgewood subdivision, filed an affidavit wherein he averred that he has transferred control of WHA to the lot owners and that he has no voting rights regarding election of directors of WHA.

In consideration of the foregoing, we find that WHA qualifies under Section 367.022(7), Florida Statutes, as a nonprofit corporation which is exempt from our regulation. Should there be any change in the circumstances or method of operation of the water

ORDER NO. 25460
DOCKET NO. 910962-WU
PAGE 3

system, WHA or any successor in interest shall inform this Commission within thirty days of such change so that we may have the opportunity to review the exempt status of the system.

It is, therefore

ORDERED by the Florida Public Service Commission that the request of the Wedgewood Homeowners Association, Inc., 12645 Bogie Court, Leesburg, Florida 34788, for an exemption from regulation pursuant to Section 367.022(7), Florida Statutes, is hereby granted. It is further

ORDERED that should there be any change in the circumstances or method of operation of the water system, Wedgewood Homeowners Association, Inc., or any successor in interest shall inform this Commission within thirty days of such change so that the Commission may have the opportunity to review the exempt status of the system. It is further

ORDERED that this docket is hereby closed.

By ORDER of the Florida Public Service Commission, this
10th day of DECEMBER, 1991.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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ORDER NO. 25460
DOCKET NO. 910962-WU
PAGE 4

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.