

MEMORANDUM

February 17, 1995

TO: DIVISION OF RECORDS AND REPORTING ✓
FROM: DIVISION OF LEGAL SERVICES (EDMONDS)
RE: DOCKET NO. 941044-WS - RESOLUTION OF BOARD OF
COMMISSIONERS OF CHARLOTTE CUNTY DECLARING CHARLOTTE
COUNTY SUBJECT TO PROVISIONS OF CHAPTER 367, F.S.

Please file the attached brief in the above-referenced docket.

SKE/dp

Attachment

cc: Division of Water and Wastewater (Coker)

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FPSC-RECORDS/REPORTING

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR CHARLOTTE COUNTY, FLORIDA
CIVIL DIVISION

WEST CHARLOTTE UTILITIES, INC.,)
)
Plaintiff,)
)
vs.) CASE NO. 95-22-CA
)
BOARD OF COUNTY COMMISSIONERS)
OF CHARLOTTE COUNTY, FLORIDA)
)
Defendant.)

AMICUS CURIAE BRIEF ON JURISDICTION

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SUMMARY OF ARGUMENT

The Florida Public Service Commission (Commission) hereby files its amicus curiae brief on jurisdiction in response to an invitation from the Court issued by Court Order dated January 18, 1995. The Commission lacks jurisdiction to hear matters which were pending but not completed before the Board of County Commissioners of Charlotte County at the time general regulatory jurisdiction transferred to the Commission. The Commission may only act within the authority expressly or impliedly conferred to it by statute. The Florida Statutes confer neither express nor implied statutory power to the Commission to hear matters that are pending before county regulators at the time the county exercises its option under Section 367.171(1), Florida Statutes, to declare that the county is subject to Chapter 367. The Florida Statutes only confer specific power to the Commission to retain jurisdiction over matters pending before the Commission at the time general regulatory jurisdiction transfers from the Commission to a county. Therefore, the Commission lacks jurisdiction to hear the matter at issue in this proceeding.

ARGUMENT

ORDER NO. PSC-94-1451-FOF-WS, ISSUED NOVEMBER 28, 1994, ACKNOWLEDGING THE RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS DECLARING CHARLOTTE COUNTY SUBJECT TO THE PROVISIONS OF CHAPTER 367, FLORIDA STATUTES, DOES NOT GRANT THE FLORIDA PUBLIC SERVICE COMMISSION JURISDICTION TO HEAR MATTERS WHICH WERE PENDING BUT NOT COMPLETED BEFORE THE BOARD OF COMMISSIONERS OF CHARLOTTE COUNTY AT THE TIME GENERAL REGULATORY JURISDICTION TRANSFERRED TO THE FLORIDA PUBLIC SERVICE COMMISSION.

The Florida Public Service Commission (Commission) is a legislatively created administrative agency. As such, it is a creature of statute. It is well settled by case law that the Commission has only the authority expressly or impliedly conferred to it by statute. City of Cape Coral v. GAC Utilities, Inc., of Florida, 281 So.2d 493, 496 (Fla. 1973). In that case, the Court stated:

... the Commission's powers, duties and authority are those and only those that are conferred expressly or impliedly by statute of the State. Any reasonable doubt as to the lawful existence of a particular power that is being exercised by the Commission must be resolved against the exercise thereof ... (citations omitted).

Chapter 367, Florida Statutes, also known as the Water and Wastewater System Regulatory Law, is the chapter of the Florida Statutes which confers upon the Commission its powers regarding water and wastewater systems. In Florida, counties have the option to regulate water and wastewater systems or pass regulatory jurisdiction to the Commission. Section 367.171, Florida Statutes,

outlines the effectiveness of Chapter 367 when regulatory jurisdiction passes between a county and the Commission. Nowhere in Chapter 367, Florida Statutes, does the Legislature provide for the Commission to hear matters pending before a county at the time a county passes general regulatory jurisdiction to the Commission. The fact that the Legislature failed to expressly mention whether the Commission could hear matters pending before a county when general regulatory jurisdiction passes to the Commission shows that there is a reasonable doubt as to the lawful existence of the Commission's power to hear such pending matters. Therefore, Cape Coral, supra, requires that the doubt be resolved against finding such Commission jurisdiction.

Section 367.171 (5), Florida Statutes, provides for the Commission to retain jurisdiction over matters pending before the Commission at the time general regulatory jurisdiction passes from the Commission to a county. It could be argued that the converse would be true, that is, a county would retain jurisdiction over matters pending before the county at the time general regulatory jurisdiction passes from the county to the Commission, so that the case would be disposed of in accordance with the law in effect on the day the case was filed with the regulatory body. However, that is not the question referred to the Commission by this Court.

It is worthy to note that in Board of County Commissioners of St. Johns County v. Beard, 601 So.2d 590, 592 (Fla. 1st DCA 1992), the Court stated that a favorable presumption will not be applied to support the [Commission's] exercise of jurisdiction where none was conferred by the Legislature.

CONCLUSION

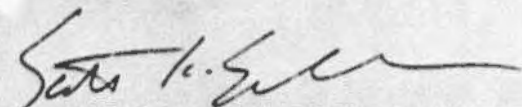
Order No. PSC-94-1451-FOF-WS, issued November 28, 1994, acknowledging the resolution of the Board of County Commissioners declaring Charlotte County subject to the provisions of Chapter 367, Florida Statutes, does not grant the Florida Public Service Commission jurisdiction to hear matters which were pending but not completed before the Board of Commissioners of Charlotte County at the time general regulatory jurisdiction transferred to the Florida Public Service Commission. The Commission believes that such authority is not contained within Chapter 367, Florida Statutes.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Amicus Brief on Jurisdiction has been furnished by U.S. Mail to the following parties this 16th day of February, 1995.

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