Interlocal agreement, purchase of water systems

Number: INFORMAL

Date: November 13, 2002

The Honorable Ginny Browne-Waite
Congresswoman-elect, District 5
United States House of Representative
2499 Culbreath Road
Brooksville, Florida 34602

Dear Congresswoman-elect Browne-Waite:

This office has been asked to comment upon the legality of the proposed sale by the Florida Water Services, a privately-owned utility company, of approximately 150 water systems located in 27 counties throughout the state to a governmental utility authority created by interlocal agreement.

Section 163.01, Florida Statutes, the Florida Interlocal Cooperation Act of 1969, authorizes public agencies to enter into interlocal agreements in order to exercise any "power, privilege, or authority which such agencies share in common and which each might exercise separately."[1] The purpose of the Florida Interlocal Cooperation Act is

"to permit local governmental units to make the most efficient use of their powers by enabling them to cooperate with other localities on a basis of mutual advantage and thereby to provide services and facilities in a manner and pursuant to forms of governmental organization that will accord best with geographic, economic, population, and other factors influencing the needs and development of local communities."[2]

Pursuant to section 163.01(7)(g)1., Florida Statutes, any separate legal entity created under this section, the membership of which is limited to municipalities and counties of the state, may "acquire, own, construct, improve, operate, and manage public facilities, or finance facilities on behalf of any person, relating to a governmental function or purpose, including, but not limited to, wastewater facilities, water or alternative water supply facilities, and water reuse facilities, which may serve populations within or outside of the members of the entity."

The governmental utility authority in the instant inquiry, the Florida Water Services Authority (FWSA), was created by interlocal agreement between the cities of Gulf Breeze and Milton. This office, however, has also been asked to consider the legality of an earlier proposed sale of these water systems to the Florida Governmental Utility Authority (FGUA), a governmental utility authority created by several counties in South Florida.

By way of background, in 1997, the Florida Legislature added section 163.01(7)(g)1., Florida Statutes, to clarify that interlocal agreements may be used by municipalities and counties of the state to collectively purchase privately owned water systems together with lawful ability to pay for those systems by bonds, notes or loans.

The Florida Governmental Utility Authority was created by interlocal agreement between several south Florida counties and now operates water systems in each of the member counties comprising the authority. In September 2002, a new governmental utility authority entitled Florida Water Services Authority was created by interlocal agreement between the cities of Gulf Breeze and Milton. The Florida Water Services Authority does not currently operate any water systems in Florida.

In both requests, this office has been asked to comment on the intent of the Legislature with regard to the power, responsibility, and limitations of a governmental utility authority. These are issues that are not readily apparent on the face of the statute. Consequently, the question of legislative intent is best left to the Legislature.

At this time this office must decline to comment upon the proposed purchases of the water systems by one or the other of the two governmental utility authorities. This office has been advised that the City of Marco Island has already filed suit against Florida Water Services in the Collier County circuit court on this matter.[3] In the instant inquiry, it would appear to be appropriate to allow the courts to definitively resolve the questions and issues raised by the various parties in this dispute.

In light of the nature of these issues and the need for an expeditious and binding resolution and in order to avoid an intrusion into the province of the judiciary, this office must decline to comment upon this matter at this time.

Sincerely,

Richard E. Doran
Attorney General

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[1] Section 163.01(4), Fla. Stat. *And see* s. 180.02(2), Fla. Stat., which provides:

"Any municipality may extend and execute all of its corporate powers applicable for the accomplishment of the purposes of this chapter [relating to municipal public works] outside of its corporate limits, as hereinafter provided and as may be desirable or necessary for the promotion of the public health, safety and welfare or for the accomplishment of the purposes of this chapter; provided, however, that said corporate powers shall not extend or apply within the corporate limits of another municipality."

[2] Section 163.01(2), Fla. Stat. *See* s. 163.01(7)(a), Fla. Stat.(interlocal agreement may provide for a separate legal or administrative entity to administer or execute the agreement, which may be a commission, board, or council constituted pursuant to the agreement).

[3] *See* City of Marco Island v. Florida Water Services Authority, Case No. 02-4276-CA (20th Jud. Cir., filed October 18, 2002).