Municipal Electric Utilities

Number: INFORMAL

Date: September 04, 2008

The Honorable Stan Mayfield
The Florida House of Representatives
402 South Monroe Street
222 The Capitol
Tallahassee, Florida 32399-1300

Dear Representative Mayfield:

This office is in receipt of your letter of August 27, 2008, requesting an Attorney General's Opinion on several questions. Each of these questions relates to section 37, Chapter 2008-227, Laws of Florida, which you co-sponsored with Representative Kreegel. Attorney General McCollum has asked me to provide an informal response to your letter.

Two of your questions involve the rules of statutory interpretation as they apply to terms used in statutes when no definition is provided. You also ask whether a particular municipality may come within the terms of the newly enacted statute. While this office can assist you with discussing the rules of statutory construction that are used in Attorney General Opinions and by the courts, no comment will be provided on the applicability of the law to a particular local governmental entity except at the request of that entity through a majority of the members of the governing board.[1] Mixed questions of law and fact, such as whether a particular statutory enactment applies under specific facts, are the province of the judiciary, and this office has no authority to resolve those questions.[2] Any definitive resolution as to whether the City of Vero Beach Electric Utility may qualify as an "affected municipal electric utility" under the new statute will have to be resolved by a judge in an appropriate proceeding.[3]

You have asked two questions relating to the meaning of certain terms or phrases used in section 37, Chapter 2008-227, Laws of Florida, creating subsection (7) of section 366.04, Florida Statutes. This section deals with the jurisdiction of the Florida Public Service Commission[4] and provides as follows:

"(7)(a) As used in this subsection, the term 'affected municipal electric utility' means a municipality that operates an electric utility that:
1. Serves two cities in the same county;
2. Is located in a noncharter county;
3. Has between 30,000 and 35,000 *retail electric customers* as of September 30, 2007; and
4. Does not have a *service territory* that extends beyond its home county as of September 30, 2007.

(b) Each affected municipal electric utility shall conduct a referendum election of all of its *retail electric customers*, with each named *retail electric customer* having one vote, concurrent with the next regularly scheduled general election following the effective date of this act.

(c) The ballot for the referendum election required under paragraph (b) shall contain the following question: 'Should a separate electric utility authority be created to operate the business of the electric utility in the affected municipal electric utility?' The statement shall be followed by the word 'yes' and the word 'no.'

(d) The provisions of the Election Code relating to notice and conduct of the election shall be followed to the extent practicable. Costs of the referendum election shall be borne by the affected municipal electric utility.

(e) If a majority of the affected municipal electric utility's *retail electric customers* vote in favor of creating a separate electric utility authority, the affected municipal electric utility shall, no later than January 15, 2009, provide to each member of the Legislature whose district includes any portion of the electric service territory of the affected municipal electric utility a proposed charter that transfers operations of its electric, water, and sewer utility businesses to a duly-created authority, the governing board of which shall proportionally represent the number of county and city ratepayers of the electric utility." (e.s.)

You have asked for this office's assistance in determining what the terms "retail electric customers" and "service territory" mean as those terms are used in Chapter 366, Florida Statutes, and as emphasized above. While a number of definitions were added to Chapter 366 by Chapter 2008-227, Laws of Florida,[5] my review of the bill does not indicate that any definition of these terms is provided. Nor does a review of the legislative history surrounding enactment of Chapter 2008-227, Laws of Florida, provide any direction on this question.[6]

The primary purpose of statutory construction is to ascertain the intent of the Legislature. The rules of statutory construction were developed to determine that intent. The legislative history of a statute may be used to clarify ambiguity and illuminate legislative intent. However, legislative statements made subsequent to enactment of a statute may not be treated as a part of legislative history.[7]

In situations such as this one, where no legislative history objectively points to the meanings to be given to these terms, words in common usage are construed in their plain and ordinary sense and, if necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary.[8] Thus, it would be necessary to turn to the common and ordinary definitions of these terms as found in a dictionary.

I trust that these informal comments will be helpful to you in resolving these questions. If these matters continue to be problematical, it may be advisable to seek a definitive resolution of your questions in court. Opinions of the Florida Attorney General are merely persuasive and not binding authority.[9] Because it appears that this new statute may require an election and time is of the essence, this office would strongly advise seeking a binding resolution of these questions.

Thank you for contacting this office for assistance.

Sincerely,

Gerry Hammond

Senior Assistant Attorney General

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[1] *See* Department of Legal Affairs Statement Concerning Attorney General Opinions (available at www.myfloridalegal.com), and s. 16.01(3), Fla. Stat.

[2] *See* Inf. Op. to The Honorable David Johnson, March 31, 2008; Ops. Att'y Gen. Fla. 06-39 (2006), 06-07 (2006), and 05-10 (2005); s. 16.01(3), Fla. Stat.

[3] *Id.*

[4] *See* s. 366.02(3), Fla. Stat., providing a definition for the term "[c]ommission" as it is used in this chapter.

[5] The bill revised definitions of a number of terms including "cost," "preconstruction," "energy resources," "demand-side renewable energy," as well as "environmental compliance costs" and "biomass." *See* Title, Ch. 2008-227, Laws of Fla., and various sections of the law.

[6] *See* House of Representatives Staff Analysis, HB 7135, dated April 16, 2008.

[7] *See Security Feed and Seed Company v. Lee*, 189 So. 869 (Fla. 1939) (testimony of members of senate is of doubtful verity if at all admissible to show what was intended by a particular statute).

[8] *See Rollins v. Pizzarelli*, 761 So. 2d 294 (Fla. 2000); *Green v. State*, 604 So. 2d 471 (Fla. 1992).

[9] *See* s. 16.01(3), Fla. Stat.; *and see Miller v. Carson*, 392 F. Supp. 515, (M.D. Fla. 1975), *affirmed in part, modified in part and remanded* 563 F.2d 741 (Fla. 5th Cir. 1977), *rehearing denied* 566 F.2d 106 (Fla. 5th Cir. 1977).