



INTEROFFICE MEMORANDUM

040950

Office of the City Attorney

TO: Mayor and City Commissioners

DATE: February 14, 2005
CONSENT ITEM

FROM: Marion J. Radson, City Attorney

SUBJECT: City of Gainesville, Florida v. State of Florida, Department of Transportation (B)

Recommendation: The City Commission authorize the City Attorney's Office to file an appeal to the First District Court of Appeal.

After numerous attempts to resolve the issue without resorting to litigation, the City filed suit against the FDOT alleging that the FDOT owes the City for stormwater utility fees relating to two parcels of property previously occupied by the FDOT within the City limits. The Complaint was originally filed in the Circuit Court of the Eighth Judicial Circuit, in and for Alachua County, Florida, but was transferred to the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida. The FDOT filed a Motion to Dismiss based on its assertion that the City's Complaint failed to allege the existence of a written agreement between the City and the FDOT for payment of stormwater utility fees, and that, absent such an agreement, the State did not waive sovereign immunity to be sued to collect utility fees. However, the City asserted that the legislature provided a statutory cause of action to recover unpaid stormwater utility fees as set forth in section 180.13, Florida Statutes.

After a hearing held in Tallahassee on January 10, 2005, the Honorable Nikki A. Clark, Circuit Judge, issued an Order dismissing the City's Complaint, finding that the FDOT was protected by sovereign immunity in this instance. Judge Clark specifically dismissed the Complaint with prejudice so that it could be promptly appealed to the District Court.

The issue to be determined by the appellate courts is whether the state legislature has waived sovereign immunity to allow a municipality to sue to collect unpaid utility fees from a state agency. The City asserts such waiver is found in section 180.13(2), Florida Statutes, which states,

The city council, or other legislative body of the municipality, by whatever name known, may establish just and equitable rates or charges to be paid to the municipality for the use of the utility by each person, firm or corporation whose premises are served thereby; and provided further, that if the charges so fixed are not paid when due, such sums may be recovered by the said municipality by suit in a court having jurisdiction of said cause or by discontinuance of service of such utility until delinquent charges for services thereof are paid, including charge covering any reasonable expense for reconnecting such service after such


delinquencies are paid, or any other lawful method of enforcement of the payment of such delinquencies.

The First District Court of Appeal and the Florida Supreme Court have both previously considered the FDOT to be a person as contemplated by section 180.13(2), thus authorizing the City to charge stormwater utility fees to the FDOT. Now, the City is merely arguing that the FDOT should still be considered a person throughout the remainder of the sentence that comprises section 180.13(2), authorizing the City to sue the FDOT to collect unpaid stormwater utility fees.

The case is of importance to all municipalities within the State of Florida that provide utility services, stormwater or otherwise, to State agencies. Although, it should be mentioned that, despite the FDOT's position in this matter, State agencies typically pay their utility fees.


The City Attorney's Office requests authorization to file an appeal of the Circuit Court's decision to the First District Court of Appeal. The case will be handled in-house by the City Attorney's Office.

Prepared by:



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Approved
And Submitted by:



MARION E. KADSON
City Attorney