



MEMORANDUM

Office of the City Attorney

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TO: Mayor and City Commissioners **DATE:** January 24, 2000

FROM: City Attorney **CONSENT**

SUBJECT: Telecommunications Constitutional Litigation (Chapter 97-197, Laws of Florida)

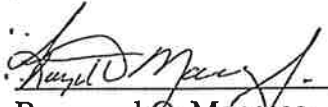
Recommendation: The City Commission authorize the City of Gainesville through special counsel to challenge the constitutionality of Chapter 97-197, Laws of Florida.

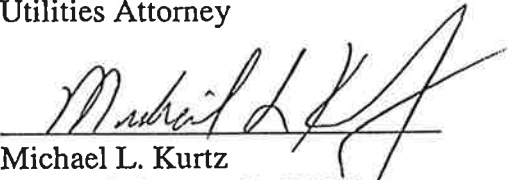
The City Commission by action of December 8, 1997, has previously authorized participation of the City of Gainesville in the legal challenge of Chapter 97-197, Laws of Florida, through the Florida Municipal Electric Association (FMEA), and the retention of the law firm of Carlton, Fields, Ward, Emmanuel, Smith and Cutler, P.A., to prosecute the legal challenge on their behalf.


You will recall that Chapter 97-197, Laws of Florida, was passed by the Legislature during the 1997 Session and, in part, was intended to impose ad valorem and other taxes upon assets of cities providing telecommunications services for which a certificate is required under Chapter 364, Florida Statutes. This is the first instance that state legislation has sought to impose ad valorem taxes upon municipal assets. These services include alternate access vendor services and alternate local exchange carrier services. The City is impacted because its telecommunications utility known as "GRUCom" provides these services.

Special counsel in consultation with the Utilities Attorney have negotiated an agreement whereby the Florida Department of Revenue will respond to a suit challenging the constitutionality of this imposition of taxes on municipalities, which suit will be brought in Tallahassee. The action will be funded by certain members of FMEA as well as the Florida Municipal Power Agency. Gainesville has been selected by the cities to file the lawsuit in its name because GRUCom is currently an active innovative supplier of telecommunication services. The City of Gainesville, therefore, has been deemed most favorable to a good outcome in the challenge.

Fiscal Impact: Special counsel estimates that the cost of litigating the matter will range between \$75,000 and \$100,000 which will be shared by nine members of FMEA (\$10,000 each) and a \$10,000 contribution from FMPA. GRUCom staff project that without a successful challenge to this litigation the annual ad valorem tax impact to the utility will average over \$100,000 annually for the next six years. In the year 2005 certain exemptions will expire and the tax is expected to be at least \$300,000 annually thereafter. Funds for the purpose of this litigation are available in the current and proposed GRU budgets.

Prepared by: 
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Approved by: 
Michael L. Kurtz
General Manager for Utilities

Submitted by: 
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City Attorney