

FLORIDA MUNICIPAL UTILITY CHARTER PROVISIONS

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FLORIDA MUNICIPAL CHARTER UTILITY SALE PROVISIONS

- **MUNICIPAL PREROGATIVE TO SERVE UTILITIES**
- **HISTORIC GENERAL LAW PROPOSED UTILITY SALE REFERENDA REQUIREMENT**
- **CHARTER PROPOSED UTILITY SALE REFERENDA REQUIREMENT**
- **JACKSONVILLE CONTEXT**
- **WHAT HAPPENS UNDER CURRENT CHARTER IF SALE GOES FORWARD**
- **SOME REMAINING QUESTIONS**

IN FLORIDA, THERE IS A MUNICIPAL PREROGATIVE TO SERVE UTILITIES WITHIN CITIES

- **SINCE THE 19TH CENTURY, FLORIDA CITIES HAVE HELD A MUNICIPAL PREROGATIVE TO SERVE UTILITIES.**
- **THE MUNICIPAL PREROGATIVE IS BASED UPON THE POWER TO GRANT FRANCHISES FOR THE EXCLUSIVE RIGHT TO PROVIDE UTILITIES WITHIN THE MUNICIPAL TERRITORY, A POWER RESERVED TO CITIES BY STATUTE. §§ 166.042, 180.14, & 366.11, FL. ST.**
- **THIS MUNICIPAL PREROGATIVE IS HELD IN TRUST FOR THE BENEFIT OF THE PUBLIC BY THE CITY COUNCIL.**
- **UNDER THE JACKSONVILLE CHARTER, THE CITY COUNCIL HOLDS THE EXCLUSIVE RIGHT TO PROVIDE UTILITIES WITHIN THE CITY AND ITS TERRITORY.**
- **THE CHARTER DELEGATES THE CITY'S POWER TO JEA. § 21.01, JCC**
- **UNDER THE CHARTER, JEA PAYS YOU A FRANCHISE FEE. § 21.07(1), JCC**
- **JEA SUCCESSFULLY ARGUED MUNICIPAL PREROGATIVE TO SERVE BEFORE THE FLORIDA SUPREME COURT IN 1997. See *Ameristeel Corp. v. Susan Clark*, 691 So.2d 473, 478 (Fla. 1997).**

FROM 1897 TO 1973, NO FLORIDA CITY COULD BUY AN ELECTRIC OR GAS SYSTEM WITHOUT A REFERENDUM

- **IN 1895, JACKSONVILLE SUCCESSFULLY DEFEATED A LEGAL CHALLENGE BY THE INCUMBENT PRIVATE POWER COMPANY TO ENJOIN THE PURCHASE OF A POWER PLANT FROM GENERAL ELECTRIC TO SUPPLY LIGHT TO CITY RESIDENTS. See *Jacksonville electric Light Company v. City of Jacksonville*, 36 Fla. 229, 18 So. 677 (1895).**
- **DURING THE NEXT LEGISLATIVE SESSION OF 1897, THE LEGISLATURE ADOPTED A GENERAL LAW PROHIBITING THE PURCHASE, CONSTRUCTION, OR LEASE OF ELECTRIC OR GAS PLANTS BY CITIES WITHOUT A REFERENDUM. CHAPTER 4600, LAWS OF FLORIDA (1897) CODIFIED IN § 172.02, FL.ST. (1971)**
- **FOR THE NEXT 76 YEARS, NO FLORIDA CITY COULD START AN ELECTRIC SYSTEM WITHOUT HOLDING A REFERENDUM**
- **THE LAW WAS REPEALED WITH THE ADOPTION OF THE MUNICIPAL HOME RULE POWERS ACT OF 1973.**
- **WHAT REMAINED WERE A HANDFUL OF CHARTER PROVISIONS THAT REQUIRED REFERENDA PRIOR TO THE PURCHASE OR SALE OF ELECTRIC PROPERTIES**

VARIOUS FLORIDA CHARTER PROVISIONS RELATED TO THE SALE OF MUNICIPAL UTILITIES

<u>City</u>	<u>Year</u>	<u>Membership</u>	<u>Provision</u>
• Bushnell	2006/2016	N/A	referendum prior to sale of utilities by CC
• Fort Pierce	1959	Mayor + CC pick 4	referendum prior to sale of utilities by CC
• Gainesville	1927	N/A	referendum prior to sale of utilities by CC
• JEA	2018	Mayor picks + CC oks	referendum prior to sale of utilities by CC
• UB, Key West	1996	elected by ratepayers	referendum prior to sale of utilities by CC
• KUA	1985	4/5s vote of CC	referenda prior to sale of utilities by CC
• Lake Worth	1935	NA	referenda prior to sale of utilities by CC
• Lakeland	2001	N/A	referenda prior to sale of utilities by CC by 67% vote
• UCNSB	1967	CC appoints & may terminate Bd. Members	referenda prior to sale of utilities by CC
• OUC	1923	Mayor + CC pick 4	no referenda required
• Starke	1927	N/A	referenda prior to sale of utilities by CC by 75% vote
• Tallahassee	1927/1957	N/A	referenda prior to sale of utilities by CC

SINCE THE END OF WORLD WAR II, ELECTRIC SYSTEM SALES IN FLORIDA ARE RARE

- **NUMEROUS CITIES HAVE CHARTERS CONTAINING PROVISIONS REQUIRING VOTER APPROVAL OF THE SALE OF CITY ASSETS**
- **FROM 1897 TO 1973, FLORIDA MANDATED VOTER APPROVAL BEFORE A CITY COULD BUY AN ELECTRIC OR GAS UTILITY**
- **SINCE 1899, FLORIDA CITIES HAVE HAD THE DISCRETION TO REQUIRE PURCHASE OPTIONS IN UTILITY FRANCHISES; 50 STILL HAVE SUCH OPTIONS**
- **SINCE THE 1920s, PRIVATE IOUs HAVE SOUGHT TO BUY FLORIDA MUNICIPAL ELECTRIC UTILITIES**
- **IN THE 1970s, A FEDERAL COURT FOUND THAT FLORIDA IOUs CONSPIRED TO FORCE MUNICIPAL ELECTRIC UTILITIES OUT OF BUSINESS**
- **THERE HAVE BEEN ONLY 2 SALES OF MUNICIPAL ELECTRIC UTILITIES IN THE LAST 30 YEARS (SEBRING & VERO BEACH)**
- **THERE HAVE BEEN ONLY 2 PURCHASES OF ELECTRIC UTILITIES BY CITIES IN THE LAST CENTURY (WINTER PARK & BUSHNELL)**
- **JACKSONVILLE ITSELF HAD TO WITHSTAND LEGAL CHALLENGES FROM A PRIVATE PROVIDER BEFORE IT COULD ESTABLISH ITS OWN ELECTRIC UTILITY**

JACKSONVILLE CONTEXT – WHAT JUST HAPPENED

- DECEMBER, 2017—INTEREST EXPRESSED IN PRIVATIZING JEA
- FEBRUARY, 2018
 - OPINION RENDERED THAT REFERENDUM NOT NEEDED TO SELL
 - PFM PROVIDES A RANGE OF VALUE ESTIMATES OF \$7.5 BILLION TO \$11 BILLION FOR THE COMBINED SYSTEMS
 - DEBATE OVER WHETHER JEA SALE SHOULD BE INVESTIGATED
- MARCH, 2018---CIVIC COUNCIL BEGINS STUDY OF JEA SALE; HIRES HARTMAN TO DO APPRAISAL
- APRIL, 2018
 - JEA CEO RESIGNS
 - NEW CEO HIRED ON INTERIM BASIS
- NOVEMBER 2018
 - STRAW BALLOT RESULTS IN OVERWHELMING SUPPORT FOR CITY COUNCIL VETO RIGHTS OVER SALE OF JEA
 - INTERIM JEA CEO BECOMES PERMANENT CEO
 - CHARTER AMENDMENT REQUIRING REFERENDUM PASSES
- DECEMBER 2018---JFPURC ESTIMATES VALUE AT \$6.3 TO \$7.5 BILLION
- JUNE, 2019---CEO CLAIMS JEA IS FACING "DEATH SPIRAL"
- JULY, 2019---JEA BOARD OPTS TO STUDY PRIVATIZATION, HIRES 4 FIRMS TO PROVIDE FINANCIAL & LEGAL CONSULTING FOR THE SALE, FLOATS BONUS PLAN FOR C-WING
- AUGUST, 2019---INVITATION TO NEGOTIATE IS ISSUED SOLICITING OFFERS TO PURCHASE
- SEPTEMBER, 2019---"CLOAKED PROCESS" PUT IN PLACE FOR JEA ITN, WITH SAME PROCESS "SUGGESTED" FOR CITY COUNCIL
- OCTOBER, 2019---JEA CEO REFUSES TO ANSWER CONTRIBUTED ASSETS QUESTION DURING CONFERENCE CALL; 4 DAYS LATER, ITN SCHEDULE IS SPEEDED UP
- NOVEMBER, 2019---BONUS PLAN DISCLOSED
- DECEMBER, 2019
 - BONUS PLAN ATTACKED
 - SECRET SALES TALKS MOVED TO ATLANTA
 - JEA CEO REFUSES TO WITHDRAW BONUS PLAN
 - JEA CEO TERMINATED
 - JEA BOARD RESIGNS

IF JEA HAD COMPLETED THE ITN, WHAT WOULD HAPPEN?

- **JACKSONVILLE CHARTER CONTROLS**
- **JEA OPTIONS INCLUDED ASSUMPTION THAT THE COMBINED SYSTEMS OR PORTION THEREOF COULD BE SOLD**
- **CHARTER SAYS THERE CAN BE NO TRANSFER WITHOUT CITY COUNCIL APPROVAL AND REFERENDUM**
- **PROPOSED SALE OF WATER, SEWER, OR BOTH SYSTEMS MEANS SECTION 180.301, FLORIDA STATUTES, APPLIES**
- **IF PROPOSED SALE OF TEN PERCENT OF THE COMBINED SYSTEMS IS APPROVED BY THE CITY COUNCIL, A CHARTER REFERENDUM IS REQUIRED**
- **IF A CHARTER REFERENDUM IS REQUIRED, SECTION 101.161, FLORIDA STATUTES, APPLIES**

SECTION 180.301, FLORIDA STATUTES (CHAPTER 84-84, LAWS OF FLORIDA)

- **NO FLORIDA CITY CAN BUY OR SELL WATER OR SEWER UTILITIES UNTIL THE CITY COUNCIL:**
 - **HOLDS A PUBLIC HEARING**
 - **DETERMINES THE TRANSACTION IS “IN THE PUBLIC INTEREST”**
 - **APPLIES TEN CRITERIA, INCLUDING IMPACTS OF SALE ON CUSTOMERS**
- **1984 STATUTE IS BASED UPON SIMILAR CRITERIA USED BY THE FLORIDA PUBLIC SERVICE COMMISSION**
- **CITY COUNCILS TYPICALLY PREPARE A BRIEFING DOCUMENT THAT ANALYZES MANDATORY STATUTORY ISSUES**
- **THERE ARE NO JUDICIAL DECISIONS INTERPRETING SECTION 180.301**

THE REFERENDA STATUTE (SECTION 101.161, FLORIDA STATUTES)

- **APPLIES TO PUBLIC MEASURE SUBMITTED TO VOTE OF PEOPLE**
- **REQUIRES BALLOT SUMMARY IN “CLEAR & UNAMBIGUOUS LANGUAGE”**
- **BALLOT SUMMARY MUST BE AN EXPLANATORY STATEMENT OF THE CHIEF PURPOSE OF THE MEASURE**
- **BALLOT SUMMARY LIMITED TO 75 WORDS**
- **REQUIRES BALLOT TITLE OF NO MORE THAN 15 WORDS**
- **EXISTING JUDICIAL DECISIONS STRIKE MISLEADING REFERENDA**

LET MIAMI BEACH DECIDE, a Florida Political Committee, Appellant,

v.

CITY OF MIAMI BEACH, et al., Appellees.

120 So.3d 1282 (Fla. 3rd DCA 2013)

- **CITIZENS GROUP CHALLENGED PROPOSED LEASE OF MIAMI BEACH CONVENTION CENTER**
- **CHARTER REQUIRED THAT LEASE OF CERTAIN PROPERTIES NEAR MIAMI BEACH CONVENTION CENTER FOR TEN YEARS OR LONGER MUST BE APPROVED BY CITY-WIDE REFERENDUM**
- **CITY PROPOSED REFERENDUM TO APPROVE LEASE NOT YET NEGOTIATED, WITH NO DISCLOSURE OF MATERIAL TERMS**
- **NO DISCLOSURE OF LEASE TERMS IN THE BALLOT TITLE, SUMMARY, OR LANGUAGE**
- **“VOTERS MUST BE GIVEN NOTICE OF THE MATERIAL TERMS OF THE LEASE THEY ARE BEING ASKED TO APPROVE UNDER THE CHARTER PROVISION.”**

CITY OF BUSHNELL, FLORIDA,

v.

**SUMTER ELECTRIC COOPERATIVE, INC., AND
CITIZENS FOR COOPERATIVE POWER,
5TH CIRCUIT COURT, 2016**

- **CITY SOUGHT TO ENFORCE ITS RIGHT TO BUY ELECTRIC DISTRIBUTION SYSTEM FROM SECO**
- **SECO FUNDED A POLITICAL COMMITTEE TO SPONSOR A CHARTER AMENDMENT**
- **THE CHARTER AMENDMENT WOULD HAVE FORCED THE SALE OF THE CITY'S UTILITY SYSTEM WITH NO TERMS**
- **THE CITY FILED SUIT TO INVALIDATE THE PROPOSED CHARTER AMENDMENT**
- **THE COURT STRUCK THE PROPOSED REFERENDUM, FOLLOWING THE LET MIAMI BEACH DECIDE CASE**

SOME REMAINING QUESTIONS

- **WHY AREN'T OTHER CITIES TRYING TO SELL THEIR ELECTRIC SYSTEMS?**
- **WHEN FLORIDA POWER (2000), PROGRESS ENERGY (2012), & GULF POWER (2019) SOLD THEIR PRIVATELY OWNED ELECTRIC SYSTEMS IN FLORIDA, DID THEY SELL BECAUSE OF A DEATH SPIRAL OR DID THEY INSTEAD RECOVER A PREMIUM?**
- **IF THERE IS A PREMIUM VALUE FOR JEA, FROM WHOM WILL THE PREMIUM BE COLLECTED?**
- **WHAT IS THE PURPOSE BEHIND THE FILING OF HOUSE BILL 653 THAT SEEKS TO PROHIBIT THE USE OF ELECTRIC REVENUES BY CITIES FOR MUNICIPAL GENERAL FUND PURPOSES?**
- **WHAT IS THE IMPACT TO CUSTOMERS IF THE LEGISLATURE ADOPTS PROPOSED SB 658/HB 207 PERMITTING THE PUBLIC SERVICE COMMISSION TO INCLUDE CUSTOMER CONTRIBUTIONS IN RATE BASE AFTER THE SALE OF A PUBLICLY OWNED SYSTEM?**
- **IS THERE AN AMENDMENT TO THE JACKSONVILLE CITY CHARTER THAT WILL HELP PREVENT A REPEAT?**