



OFFICE OF THE CITY ATTORNEY

To: Council President Spencer and Members of City Council

From: Lysia H. Bowling, City Attorney *LHB*

Date: September 20, 2017

Re: Legal Opinion on ECUA Authority

You have asked for a legal opinion on whether the Emerald Coast Utilities Authority ("ECUA") must obtain City Council consent to build an emergency wastewater storage tank on property it owns within the city limits pursuant to the provisions of Section 153.03, Florida Statutes.

In 1981, the enabling legislation ("Act")<sup>1</sup> that created the ECUA divested the City of all powers and authority related to sewage collection and disposal and water supply and expressly conferred those powers on the ECUA. The Act granted the ECUA plenary authority with respect to constructing, providing, improving, expanding, maintaining and operating water and sewer utilities throughout the County, along with all powers and authorities necessary, convenient or desirable to accomplish the purposes of the Act.

Consequently, it is my opinion that the ECUA is authorized to improve its sewage collection and disposal and water supply system on property it owns within the city limits, without obtaining City Council consent, pursuant to those very powers expressly conferred upon it by the Act, and where the City has been divested of its role, albeit subject to city zoning and land use regulations and permit requirements.

I find Section 153.03, Florida Statutes, a 1955 statute that granted counties certain powers related to water and sewer systems, inapplicable to an analysis of the facts at hand because the municipal consent requirement contained in Section 153.03(1), Florida Statutes, applies only to counties. The specific language states:

"Any of the several counties of the state ... is hereby authorized and empowered (1) to purchase and/or construct and to improve, extend, enlarge, and reconstruct a water supply system or systems or sewage disposal system or systems ... and to operate, manage and control all such systems so purchased and/or constructed ... and to furnish and supply water and sewage collection and disposal services to [anyone] ; provided, however, that none of the facilities provided by this chapter may be constructed, owned, operated or maintained by the county on property located within the corporate

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<sup>1</sup> Chapter 1981-376, Law of Florida, as recodified by Chapter 2001-324, Laws of Florida

limits of any municipality without the consent of the council, commission or body having general legislative authority in the government of such municipality unless such facilities were owned by the county on such property prior to the time such property was included within the corporate limits of such municipality. No county shall furnish any of the facilities provided by this chapter to any property already being furnished like facilities by any municipality without the express consent of the council, commission or body having general legislative authority in the government of such municipality.”

The Emerald Coast Utilities Authority is not a “county,” but is an independent special district. See Section 1, Chapter 2001-324, Laws of Florida (2001). Thus, the statutory consent requirement does not apply to the Authority. Even if Section 153.03 were applicable, however, ECUA would nevertheless not need consent of City Council in that all of the powers of City Council under that section regarding water and sewer were transferred to ECUA by virtue of the Act.