

Homeowner hookup to municipal sewage system

Number: INFORMAL

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Mr. Alan C. Jensen
Atlantic Beach City Attorney
Post Office Box 54057
Jacksonville, Florida 32240-0457

RE: PUBLIC HEALTH--MUNICIPALITIES--SEWAGE TREATMENT--requirement for homeowner hookup to city owned sewage system. s. 381.00655, Fla. Stat.

Dear Mr. Jensen:

You have asked for assistance regarding the enforcement of homeowner hookup to a city-owned sewerage system pursuant to section 381.00655, Florida Statutes. Attorney General Butterworth has asked me to respond to your letter.

Initially, I must reiterate that this office is authorized by statute to issue opinions on questions of state law. Local ordinances such as the one adopted by the City of Atlantic Beach and matters of factual dispute such as promises made by local officials to homeowners are not within the scope of Attorney General Opinions.[1]

Section 381.00655, Florida Statutes, provides for connection to central sewerage systems by property owners who currently have onsite sewage treatment and disposal systems. An onsite sewage treatment system includes such things as septic systems. Pursuant to the statute:

"The owner of a properly functioning onsite sewage treatment and disposal system . . . must connect the system or the building's plumbing to an available publicly owned or investor-owned sewerage system within 365 days after written notification by the owner of the publicly owned or investor-owned sewerage system that the system is available for connection. The publicly owned or investor-owned sewerage system must notify the owner of the onsite sewage treatment and disposal system of the availability of the central sewerage system. No less than 1 year prior to the date the sewerage system will become available, the publicly owned or investor-owned sewerage system shall notify the affected owner of the onsite sewage treatment and disposal system of the anticipated availability of the sewerage system and shall also notify the owner that the owner will be required to connect to the sewerage system within 1 year of the actual availability. . . ."[2]

The statute also provides that the owner of an onsite sewage treatment and disposal system that must be repaired in order to function properly must connect to an available sewerage system within 90 days. This statute, by its terms, applies to both publicly owned and investor-owned sewerage systems.

Section 381.00655(2)(b), Florida Statutes, also provides that:

"A publicly owned or investor-owned sewerage system may, with the approval of the [Department of Health], waive the requirement of mandatory onsite sewage disposal connection if it determines that such connection is not required in the public interest due to public health considerations."

Clearly, the statute recognizes instances where a local government (in the form of its publicly owned system) may waive the requirement of mandatory sewer hookup if it makes a determination that the public health would not be adversely affected by this action and it secures the approval of the Department of Health.

While nothing in section 381.00655, Florida Statutes, requires a municipality to enforce the provisions of the statute, a municipality is not foreclosed from taking local legislative action providing for enforcement of section 381.00655, Florida Statutes. The Municipal Home Rule Powers Act states that cities have the power to enact legislation concerning any subject matter upon which the state Legislature may act^[3] and local ordinances relating to enforcement of provisions of section 381.00655, Florida Statutes, would appear to be appropriate subjects for legislation. In fact, section 381.00655, Florida Statutes, recognizes the authority of counties and municipalities to "enforce other laws for the protection of the public health and safety."

I trust that these informal comments will assist you in advising your client, the City Commission of Atlantic Beach.

Sincerely,

Gerry Hammond
Assistant Attorney General

GH/tgk

[1] See s. 16.01(3), Fla. Stat.

[2] Section 381.00655(1)(a), Fla. Stat.

[3] Section 166.021(3), Fla. Stat.