

PUBLIC UTILITIES

Public Utilities: Rates

Town of Palm Beach Shores v. City of Riviera Beach,
916 So. 2d 25 (Fla. 4th Dist. App. 2005)

When conflicts exist between a contract provision that sets municipal utility rates and a state statute that does the same, the statute will prevail unless the statutory provisions are discretionary on the part of the municipality.

FACTS AND PROCEDURAL HISTORY

In 1951, the City of Riviera Beach bought a water treatment system from the Town of Palm Beach Shores. Riviera Beach agreed to charge Palm Beach Shores' customers the "identical rates or charges" it charged its own customers. *Palm Beach Shores*, 916 So. 2d at 26. In 1970, the Florida Legislature adopted a statute authorizing a city to charge utility customers outside its city limits a surcharge of up to twenty-five percent above the rates charged to those inside the city limits. Fla. Stat. § 180.191(1) (2004). Riviera Beach did not attempt to charge the Palm Beach Shores customers more than the customers within Riviera Beach's city limits until 2001. However, when Riviera Beach elected to do so in 2001, Palm Beach Shores challenged the surcharge, seeking a declaratory judgment on the validity of the surcharge in light of the contract provisions. The trial court held that the 1970 statute rendered the contract's limitation on rates invalid. Palm Beach Shores appealed.

ANALYSIS

The Florida Legislature has the power to regulate rates charged by public utilities. *City of Plantation v. Util. Operating Co.*, 156 So. 2d 842, 843 (Fla. 1963). Generally, when a statute and a contract conflict in the setting of utility rates, the statute prevails. Riviera Beach contended that the 1970 statute rendered the contract provisions invalid. Palm Beach Shores asserted that the twenty-five percent surcharge was a permissive, rather than a mandatory, provision. Palm Beach Shores further stated that the 1951 contract limitation on rates was a promise made in consid-

eration of its conveyance of its water treatment plant to Riviera Beach.

The Fourth District Court of Appeal disagreed with Riviera Beach's argument. The contract between Riviera Beach and Palm Beach Shores required Riviera Beach to furnish Palm Beach Shores customers with water service at identical rates. The statute provided that a municipality *shall* charge outside customers either the same rates as its own residents, or it *may* impose a surcharge of up to twenty-five percent on the outside residents. Fla. Stat. § 180.191(1). The court agreed with Palm Beach Shores' contention that the statute did not *require* a twenty-five percent surcharge; rather, it granted Riviera Beach the discretion to charge an increased rate. Further, the court explained that because the statute did not mandate increased rates, no inconsistency between the contract and the statute existed; therefore, the City remained bound by the contract, and the court reversed the trial court's decision.

SIGNIFICANCE

Palm Beach Shores establishes that while a municipality may impose a twenty-five percent surcharge on consumers outside municipal boundaries, it is not required to do so. Furthermore, a statute that is inconsistent with the terms of a contract may invalidate the contract; however, a municipality cannot treat the permissive language of a statute as mandatory language to invalidate the terms of the preexisting contract.

RESEARCH REFERENCES

- 43 Fla. Jur. 2d *Public Service Commission* § 16 (Westlaw database updated Jan. 2006).
- 48A Fla. Jur. 2d *Statutes* § 197 (2000 & Supp. 2006).

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