O/a 4-1-88.

IN THE SUPREME COURT
STATE OF FLORIDA

FILED
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FEB 2 1988
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ENVIROGENICS SYSTEMS COMPANY,
a Delaware corporation,

Appellant,

vs.

CITY OF CAPE CORAL, FLORIDA,
a Municipal corporation,

Appellee.

_____ SUPREME COURT
CASE NO. 71,096

WATER SERVICES OF AMERICA, INC.,

Appellant,

vs.

CITY OF CAPE CORAL, FLORIDA,

Appellee.

_____/

ANSWER BRIEF OF APPELLEE

CITY OF CAPE CORAL

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PREFACE

The Appellee is the City of Cape Coral and the Appellants are Water Services of America, Inc. and Envirogenics Systems Company. The Appellee shall be referred to as "City" and the Appellants shall be referred to as "Water Services" or "Envirogenics".

The following symbols will be used:

R. - Record

A. - Appendix

STATEMENT OF FACTS

Although Appellee, City, has no specific disagreement with the Statement of the Case and the Summary of Facts set forth in the Brief of Appellants, Water Services and Envirogenics, did fail to provide necessary material facts in their statement of the facts, and they also present arguments and case law in the Statement of Facts (see Pages 4 and 5 of their Brief).

1. The Appellants, Water Services and Envirogenics, stated that the reverse osmosis water treatment system consisted of reverse osmosis members, piping, filters, pumps and other water treatment equipment housed in a pre-engineered metal building (R. 54; 92-93; 699). However, it should be noted that it is unusual in the reverse osmosis industry for companies like Water Services and Envirogenics to supply reverse osmosis technology and to build (a pre-engineered building) a housing facility (R. 93-95). Appellant, Envirogenics had planned to hire an independent contractor licensed in Florida to construct the building to house the reverse osmosis plant (R. 57). The R.O. Facility could have been built by specifying outdoor equipment, and as such, the building to cover the equipment would not be needed to protect it from the elements (R. 114-115). The building, as integral part of the R.O. Plant could have just as well been a warehouse and it also had small office space (R. 108 and R. 116). The pre-engineered metal building was estimated to cost approximately $550,000 and was approximately 13% of the overall contract price (R. 55).

2. Appellants, Water Services and Envirogenics, implied that without notice, the City disqualified Appellants as bidders on the reverse osmosis project (Page 4) and they claim that "at the very moment the bids of Envirogenics and Water Services were rejected, Water Services was engaged in the refurbishing of an existing water treatment plant for Cape Coral, and had, without ever having been licensed as a contractor, previously done work on the existing water treatment plant for Cape Coral" (Page 4 and 5 of Appellants' Brief). The Appellants, Water Services and Envirogenics, failed to point out that the work purportedly being performed by Water Services for the City at the time their bids were rejected never involved the construction of any buildings for the City of Cape Coral (R. 80). This statement is misleading because Water Services and Envirogenics were disqualified on Tuesday, July 17, 1984, at a public meeting of the City of Cape Coral City Council and they were disqualified because they were not certified as a general contractor in the State of Florida or registered through a qualifying agent pursuant to Florida Statutes, Chapter 489, prior to submitting a bid on the reverse osmosis project (R. 372-381). Further, Water Services and Envirogenics knew that the contract was for the design, procurement, installation, start-up, and testing of a seven MGD (million gallons per day) reverse osmosis treatment system, the system to be installed in a pre-engineering type building to be constructed as part of the contract (R. 655, (Ib/1, paragraph

1.01)). Appellants, Water Services and Envirogenics, proposed bid submitted stated that the construction of a reverse osmosis water treatment facility included a new building at the existing R.O. water treatment plant site (R. 655B (Ib/1)).

3. As a result of the City not accepting a bid from Water Services and Envirogenices, a lawsuit was instituted against the City for a mandatory injunction to prevent the City from awarding the bid to Hydranautics Systems Company, said request was denied by the Trial Court (R. 200). An appeal was taken from the Order denying the mandatory injunction and the issue of whether the Appellants were exempt from the licensing requirements of Chapter 489 by virtue of Section 489.103(1), Florida Statutes, was addressed exhaustively in the briefs filed by the parties (see District Court of Appeal of the Second District of Florida, Case No. 84-1642). The Trial Court's Order was affirmed. This issue was again raised in the Trial Court and the Final Declaratory Judgment held that the City of Cape Coral was not liable to Water Services or Envirogenics for rejecting their bid on the grounds that they were not licensed pursuant to the requirements of Chapter 489, Florida Statutes, because the City's construction project is not exempt from the requirements of Chapter 489, Florida Statutes, by virtue of Section 489.103(1). (A. 1)

4. By reason of the foregoing, it should be evident that the Appellants' statement (Page 4 of their Brief) that they "proved at trial that the contract for the construction and design of the reverse osmosis water treatment system was a utility contract (a fact which was never seriously disputed)" was the major issues in dispute at trial (R. 92-95, R. 114-116, R. 119-122).

QUESTION PRESENTED

Whether the Second District Court of Appeal errored in affirming the Trial Court determination that the City is not liable to Water Services and Envirogenics, for rejecting their bid on the grounds that they were not licensed pursuant to the requirements of Chapter 489, Florida Statutes, because the City's construction project is not exempt from the requirements of Chapter 489, Florida Statutes, by virtue of Section 489.103(1)?

SUMMARY OF ARGUMENT

As unlicensed contractors, Water Services and Envirogenics were required to become licensed within the State of Florida pursuant to Chapter 489, Florida Statutes (1983), prior to submitting a bid to the City on the project. Chapter 489, Florida Statutes (1983), requires that any person who submits a bid to construct or improve any building or structure must be licensed as a general contractor or qualified through a qualifying agent certified or registered under Chapter 489. Chapter 489 does provide an exemption with respect to transportation activities for construction on bridges, roads, streets, highways, and railroads, or utilities and services incidental thereto. Water Services and Envirogenics argued at the trial level that they were exempt because the City's project constituted a "utility", however, the Trial Court and the Second District Court of Appeal did not agree with them and correctly found that the City was not liable to Water Services and Envirogenics for rejecting their bid on the grounds that they were not licensed pursuant to the requirements of Chapter 489, Florida Statutes (1983), because the City of Cape Coral's construction project is not exempt from the requirements of Chapter 489, Florida Statutes, by virtue of Section 489.103(1). Accordingly, the Second District Court of Appeal affirming the Trial Court's determination that the project did not come under the exemption so argued by Water Services and Envirogenics should be affirmed.

ARGUMENT

I. THE SECOND DISTRICT COURT OF APPEAL'S DECISION SHOULD BE AFFIRMED BECAUSE SUBSTANTIAL AND COMPETENT EVIDENCE SUPPORTS THE TRIAL COURT'S FINDING THAT THE CITY'S CONSTRUCTION PROJECT DOES NOT FALL WITHIN THE EXEMPTION REQUIREMENTS OF CHAPTER 489 BY VIRTUE OF SECTION 489.103(1).

Appellants, Water Services and Envirogenics would like this Court to ignore the evidence presented in this case and only ask whether "Utilities" are a category exempt from the licensing requirements under Florida Statutes, Section 489.103(1). However, it is well settled that the findings of a Trial Judge sitting without a jury are clothed with a presumption of correctness and "an appellate court cannot reevaluate the evidence and substitute its judgment for that of the trial court." Hollywood Beach Hotel Company v. City of Hollywood, 329 So.2d 10, 15 (Fla. 1976). As explained by this Court in Palardy v. IGREC, 388 So.2d 1053, 1056 (Fla. 1980):

> It is the prerogative of the trial court to evaluate and weigh conflicting testimony after observing the bearing, demeanor and creditability of the witnesses in the court. Shaw v. Shaw, 334 So.2d 13 (Fla. 1976). Indeed it is the duty of this court to affirm a judgment which is supported by competent evidence. Westerman v. Shell's City, Inc., 265 So.2d 43 (Fla. 1972).

In the present case, testimony demonstrated that the construction of the City's reverse osmosis project also required the construction of a pre-engineered building. (R. 655A (Ib/1, paragraph 1.01)). The testimony proved that the contract for the project could be basically divided between bulk of the contract for reverse osmosis and the building and civil work (R. 53). Civil work consisted of foundations and a pre-engineered building (R. 53). Envirogenics expert stated that the civil portion of the proposal to build the reverse osmosis plant basically consisted of a building to protect the R.O. system from the elements (R. 54), and that the building's primary purpose was to protect the R.O. equipment (R. 54). Appellants', Water Services and Envirogenics, expert concluded that the building was a integral part of the reverse osmosis system (R.79). Envirogenics' expert stated that the cost of the building was approximately $550,000 and consisted of approximately 13% of the overall contract price (R.55). This testimony supports Water Services and Envirogenics view that the project was a "utility" with "incidentals", the Building. However, conflicting testimony from the expert witness offered by the City convinced the Court that the project, because of the necessary construction of a building, could not fall within the exemption of Florida Statutes, Chapter 489, by virtue of Section 489.103(1) because it was not within the meaning of "utilities and incidentals thereto" as argued by Water Services and Envirogenics. The Building and R.O. technology portion of

the project are separate in that the Building is not part of the R.O. technology (R. 93) and it is unusual for an R.O. system supplier like Water Services and Envirogenics to also construct the Housing Facility (R. 94). Envirogenics own expert testified on cross-examination that it would have had a Florida licensed contractor build the building (housing facility) had it been awarded the contract and Envirogenics has never built a building in connection with an R.O. plant in Florida (R. 57 and R. 58). The evidence showed that the building constructed to house the R.O. plant facility could have been a warehouse and it also had small office space (R. 108 and R. 116) "emphasis added". Although the Building's purpose is to provide shelter for the R.O. equipment, the equipment could have been designed to be outside without the need for the Building (R. 114 and 115). Therefore, notwithstanding the interpretation of the exemption prescribed by Florida Statute, Section 489.103(1), for "Utilities and Incidentals thereto" as argued by Water Services and Envirogenics, the Trial Court held that the City was not liable for rejecting the bid on the grounds that they were not licensed pursuant to Section 489 because the City's, "Construction project is not exempt from the requirements of Chapter 489, Florida Statutes, by virtue of Section 489.103(1)." (Emphasis added) (A. 2)

It could be argued that the finding of the Trial Court is consistent with the interpretation of Section 489.103(1) suggested by Water Services and Envirogenics, because under no stretch of the statutory interpretation of this section can it

be said that construction of a building may be done by a contractor not licensed in the State of Florida. Chapter 489, Florida Statutes (1983), requires that any person who submits a bid to construct, repair, alter, remodel, add to, subtract from, or improve any building or structure must be a licensed general contractor. Water Services and Envirogenics admit that at the time they submitted the bid they were not licensed as a general contractor. (R. 31) The provisions of Chapter 489 must be considered. Section 489.105(3), Florida Statutes (1983), provides:

> Contractor . . . means, except as expressed in this Act, a person who, for compensation, undertakes to, submits a bid to, . . . or does himself or by others construct, repair, alter, remodel, add to, subtract from, or improve any building or structure (emphasis added), including related improvements to real estate, for others or for resale to others . . . . (Emphasis added)

Section 489.113(2), Florida Statutes, (1983), provides that:

> No person who is not a licensee shall engage in the business of contracting in this State.

Section 489.119(2), Florida Statutes, (1983), states in pertinent part:

> If the applicant proposes to engage in contracting as a partnership, corporation, business trust, or other legal entity, the applicant shall apply through a qualifying agent . . . .

Section 489.119(3)(a), Florida Statutes (1983), provides in pertinent part:

> The qualifying agent shall be certified or registered under the Act in order for the business organization to be certified or registered in the category of the business conducted for which the qualifying agent is registered or certified . . . .

Section 489.127(1)(f), Florida Statutes (1983), states that,

> No person shall engage in the business or act in the capacity of a contractor without being duly registered or certified.

Section 489.127(2), Florida Statutes (1983), further provides:

> That any person who violates any provisions of this Act is guilty of a misdemeanor of the first degree punishable as provided in Section 775.082, Section 775.083, or Section 775.084.

The foregoing provisions place the burden upon Water Services and Envirogenics, "to become duly registered and certified [through a qualifying agent] before engaging in the contracting business by submitting bids to construct buildings and other improvements." Greenhut Construction Company v. Harry A. Knott, Inc., 247 So.2d 517, 522 (Fla. 1st DCA 1971), (A.3). In addition, Section 489.131(1) places a burden upon a municipality to insure compliance with the licensing provisions of Chapter 489 before awarding a contract.

In Greenhut Construction Company v. Harry A. Knott, Inc., 247 So.2d 517 (Fla. 1st DCA 1971) (A.3), the Court held that a non-resident contractor could not submit a bid for a public construction project without first being a licensed contractor.

In the City of Opa Locka v. Trustees, 193 So.2d 29, 32 (Fla. 3rd DCA 1966), the Court held that a bidder could not bid on a public project if he were not a certified contractor and also held that the City could not waive this requirement. (Emphasis added). Accordingly, based upon plain language of Chapter 489, Water Services and Envirogenics, when submitting a bid on the City of Cape Coral construction project should have been a licensed contractor prior to submitting the bid, and the City had an affirmative duty to ensure that the requirements of Chapter 489 had been met before awarding the contract.

II. APPELLANTS, WATER SERVICES AND ENVIROGENICS, DO NOT FALL WITHIN THE EXCEPTION OF CHAPTER 489.

Section 489.103(1) exempts certain construction jobs from the coverage of the Chapter, and Appellants, Water Services and Envirogenics rely exclusively on this provision. This subsection states that the licensing requirements do not apply to contractors "in work on bridges, roads, streets, highways, railroads, or utilities and services incidental thereto." Water Services and Envirogenics' interpret "utilities" as the sixth term in the series, with "services" modifying all six terms. In other words, their position is that work on (1) bridges, (2) roads, (3) streets, (4) highways, (5) railroads and (6) utilities are exempt from the licensing requirements, as are "services" incidental thereto.

The City's position is that "utilities" is not the sixth term, but instead modifies the five terms that are exempted by the subsection. In other words, work on (1) bridges, (2) roads, (3) streets, (4) highways and (5) railroads is exempt, as well as "utilities and services" incidental thereto. If the City's interpretation is correct, Appellants, Water Services and Envirogenics would not be exempted from the licensing requirement.*

There is a case that supports Appellants', Water Services and Envirogenics, position, but from the plain reading of the statute the case is wrong. Before discussing the case, let's examine the statute itself. The first five terms of the exemption all deal with transportation activities and are therefore related: (1) bridges, (2) roads, (3) streets, (4) highways and (5) railroads. "Utilities" is not of a similar nature, and would seem out of place in a series with the five preceding terms. The obvious intent was to exempt persons constructing transportation facilities, and the "utilities and services incidental thereto." The language "utilities and services incidental thereto" was inserted so that it would not be necessary to obtain a contractor's license to run a sewer pipe under a road that was being built. So a logical interpretation of the subsection is that "utilities" was meant to be a modifier of the prior five terms rather than the sixth term in the series.

* It was pointed out that even if the City is incorrect Water Services and Envirogenics would still have been required to obtain a contractor's license to bid on the job because of the construction of a Building.

The punctuation supports the foregoing interpretation. If "utilities" were meant to be the sixth term in the series, there would have been a comma after utilities. In other words, the subsection would state that the licensing requirement does not apply to contractors working on "bridges, roads, streets, highways, railroads, or utilities[,] and services incidental thereto." The absence of this comma shows that "utilities" is related to the term "services" that follows it rather than the five transportation terms that precede it.

In Wagner v. Botts, 88 S. 2d 611 (Fla. 1956), this Court established guidelines for the consideration of punctuation in the interpretation of statutes by the Courts. This Court held that:

> The better rule now seems to be that punctuation is a part of the Act and that it may be considered in the interpretation of the Act but it may not be used to create doubt or to distort or to defeat the intention of the Legislature....We deem it proper to adhere to what now appears to be the better rule which is to treat the rules of punctuation on a parity with other rules of interpretation. Wagner, at 613.

A reading of the Section 489.103 in its entirety lends further support to the City's interpretation. Subsection (5) of the statute states that the licensing requirement does not apply to "Public utilities on construction, maintenance, and development work performed by their employees, which work is incidental to their business." If work on all utilities were

exempted by subsection (1) as Appellants, Water Services and Envirogenics suggest, subsection (5) would be superfluous. Subsection (5) implicitly assumes that utilities are generally subject to the licensing requirements, and exempts utilities incidental to other construction projects. So if subsection (1) means what Appellants, Water Services and Envirogenics advocate, subsection (5) would have no meaning. Statutes should be interpreted in such a way as to give meaning to all their parts, and an interpretation should be avoided that makes any part superfluous. 49 Fla.Jur.2d Statutes, §179 (1984).

A. The Wood-Hopkins case relied upon by Appellants is incorrect.

Appellants, Water Services and Envirogenics avoid a direct look at the exemption statute in their Initial Brief, but instead understandably emphasizes Wood-Hopkins Contracting Co. v. Roger J. Au & Son, Inc., 354 So.2d 446 (Fla. 1st DCA 1978). The City concedes that there is language in Wood-Hopkins supporting Water Services and Envirogenics' interpretation of the exemption statute. It is the City's position, however, that the language relied upon by Appellants were ill-advised. Wood-Hopkins is a classic case of an appellate decision being correct in its ultimate ruling but faulty in the structure underlying the ruling.

In Wood-Hopkins the Jacksonville Electric Authority (JEA) accepted bids for the construction of a "thermal discharge unit" at one of its generating stations. The JEA prequalified 16 bidders. The bid specifications required the use of special

pipe manufactured by two companies, both of which had prequalified their pipe designs. After the bids were submitted JEA decided it did not like the pipe design of one of the two approved pipe companies. The lowest bidder (Roger J. Au & Son) by some $38,000 had submitted a bid using the pipe that was subsequently disapproved by JEA. When the manufacturer of the disfavored pipe found out about JEA's dissatisfaction, it agreed to make any necessary changes in the pipe at no cost to either the JEA or the low bidder. Nevertheless, the JEA rejected the lowest bid on two bases: first, because it used the disfavored pipe; and second, because the low bidder did not possess a contractor's license. The contract was then awarded to another bidder.

The low bidder brought suit against the JEA and the successful bidder. The trial court ultimately entered a permanent injunction forbidding the JEA from awarding the contract to the successful bidder.

On appeal the First District noted that the special act creating the JEA required contracts to be awarded to the lowest bidder. The bulk of the opinion deals with whether the low bidder should have been removed from consideration because its bid called for the use of the disfavored pipe. The court agreed with the trial court that the prequalification of the two pipe manufacturers and the assurances from the disfavored manufacturer that he would make any alterations necessary meant

that the JEA could not disqualify the low bidder on this basis. The attempted disqualification was therefore arbitrary and capricious, and an abuse of discretion.

The Wood-Hopkins court also discussed in a footnote the licensing issue presented by the instant case. The court noted that the second reason the low bidder had been disqualified was for failure to have a contractor's license, but summarily concluded that the statute "expressly exempts 'contractors in work on . . . utilities and services incidental thereto' from registration." 354 So.2d at 448 (footnote 2) (emphasis and ellipsis points in the original). Thus the court deleted the most critical part of the statute and replaced it with ellipsis points, without discussion.

There are several critical differences between Wood-Hopkins and the instant case. In Wood-Hopkins no buildings were to be built, it called for pipe work. Here a pre-engineered building with foundations was required. (R. 53) In Wood-Hopkins the special act creating the JEA mandated that the contract must go to the lowest bidder. (Emphasis added) Here there is no such requirement.

Even despite these differences, there is no denying that Wood-Hopkins supports Water Services and Envirogenics interpretation of the exemption statute. In this regard the case is just plain wrong. It appears that the First District did not like the JEA's attempt to change the bid specifications after the bids were submitted. This Court condemned the same

practice in Harry Pepper & Assoc. v. Cape Coral, 352 So.2d 1190 (Fla 2d DCA 1978). Unfortunately, in reaching the result the First District relied upon improper reasoning.

In an effort to find a definition of "utility" that could be used to distort the "true" meaning of "utilities" as the word appears in Section 489.103(1), "utilities and services incidental thereto", Water Services and Envirogenics have made reference to Sections 180.07, 367.021(3), 717.02(8), 812.14(1), and 180.07(1).

Moreover, the above-mentioned sections cited and relied upon by Water Services and Envirogenics to bolster its meaning of "utilities" are totally unrelated and inconsistent with the provisions of Chapter 489, Florida Statutes (1983).

For example, if the Court adopts the definition of "utility" as prescribed by Section 717.02(8) for the meaning of "utilities" in Section 489.103(1), a municipality would be entitled to contract with an unlicensed contractor for the construction of an administrative office building or similar building. As a further example, the word "utility" as used in Section 367.021(3) has been constructed to include a managing agent or part owner of a condominium development, see Fletcher Properties, Inc. v. Florida Public Service Commission, 356 So.2d 289 (Fla. 1978). Accordingly, applying Chapter 367's definition of "utility" to the construction suggested by Water Services and Envirogenics for Chapter 489, the owner of the condominium development could have an unlicensed contractor

construct condominiums or other related buildings connected to the condominium development (or so-called "utility"). Water Services and Envirogenics' use of Section 180.07 would broaden the definition of "utility" to the point that any work whatsoever needed by a "utility" could be performed regardless of its connection to a utility facility, i.e., building a new utility office building adjoining an existing utility plant.

By reason of the foregoing, Water Services and Envirogenics' use of the word "utility" provides this Court with no guidance whatsoever on what constitutes "utilities" under Chapter 489.103(1). Even accepting their interpretation of what constitutes work on an utility under Section 489.103(1), construction of a pre-engineered building, requiring a concrete foundation, cannot be made to fit under Water Services and Envirogenics' suggested broad interpretation of what constitutes an exemption for "utilities." Thus, the City was required to award the contract to a licensed contractor at the time the respective bids were opened. Since Water Services and Envirogenics were not licensed at the time its bid was submitted, they were properly disqualified by the City.

B. Attorney General Opinion relied upon by Appellants is incorrect.

For the same reasons set forth that the analysis in the Wood-Hopkins case was incorrect regarding the exemptions for utilities under Section 489.103(1), the Attorney General Opinion must be discounted as either incorrect in its

evaluation or ambiguous to the extent that a reasonable conclusion cannot be drawn on what would constitute a "utilities and incidentals thereto" under Section 489.103(1). The Attorney General Opinion was rendered over fifteen (15) years ago and was not even published in the 1967-68 Biannual Report of the Attorney General. In the preface of that report, the Attorney General states that the biannual report contains all the "official" opinions rendered during that two year period. Accordingly, even though the trial Court took judicial notice of the Opinion, it's status is questionable with regard to an "official" Opinion of the Attorney General. In any event, the Opinion is plainly wrong since it failed to recognize the obvious intent of the legislators that the exemption was meant to apply to transportation facilities and the punctuation of the Section is such that the word "utilities" is not a separate category and instead was meant to supplement the scope of the other categories.

Regardless of the interpretation of the exemptions as set forth in Chapter 489, Florida Statutes (1983), by virtue of the exemptions found in Section 489.103(1) because the project called for the construction of a building, Water Services and Envirogenics can never overcome the fact that no exemptions are allowed for contractors from the licensing requirements when submitting a bid on construction of a building.

III. THE ADDITION OF AN EXEMPTION FOR CONTRACTORS FOR WORK ON UTILITIES UNDER SECTION 489.103(1) IS CONTRARY TO THE STATED PURPOSE OF CHAPTER 489, FLORIDA STATUTES (1983) AND IS NOT IN THE BEST INTEREST OF THE PUBLIC OR THE STATE OF FLORIDA OR OTHER GOVERNMENTAL ENTITIES.

The purpose of Florida Statutes, Chapter 489 is to protect harm to the public from incompetent contractors and the public health, safety, and welfare in the regulation of the construction industry. Section 489.101, Florida Statutes (1983). The public health, safety, and welfare is not being serviced when a contractor is allowed to construct utilities and buildings or other structural improvements in connection with the public utility project. Entities not licensed in the State of Florida may also not be licensed anywhere, and as such, to allow an unlicensed entity to construct a public utility and service incidental thereto (buildings) presents the same danger to the public as allowing a contractor to build a building for a City without being licensed under Florida Statutes, Chapter 489. The Legislators recognize the need for licensed contractors in the construction of buildings notwithstanding whether the building was constructed for a governmental agency or a private citizen. Section 489.105(3), Florida Statutes (1983). To accept the statutory interpretation offered by Water Services and Envirogenices would open the door for the construction of buildings and other structural improvements by unlicensed contractors so long as the construction is performed in connection with utility improvements. Water Services and Envirogenics' argument would

be more interesting if the facts in this case only involved the construction of a public utility, but this case also involves the construction of a building that must also fall within the exemption they suggested. This Court has the opportunity to correct the improper statutory interpretation suggested by in Wood-Hopkins and in so doing, this Court will further the legislative intent underlined by Chapter 489 by protecting the health, safety, and welfare of citizens when work is performed for governmental entities. Citizens are protected by Chapter 489 because it is the citizens that will pay the price of improper construction performed for their governmental entity. Citizens will pay the price of defective workmanship through an increase in taxes or greater personal injury.

It is in the best interest of the public for this Court to affirm the correct statutory interpretation of Section 489.103(1) decided by the Second District Court of Appeal to assure that only qualified entities are allowed to perform work as envisioned by the Florida Legislators.

CONCLUSION

The decision of the Second District Court of Appeal that affirmed the Trial Court's ruling that the City is not liable to Appellants for rejecting their bid because Appellants were not licensed pursuant to the requirements of Chapter 489, Florida Statutes (1983), because the City's construction project is not exempt from the requirements of Chapter 489, Florida Statutes (1983), by virtue of Section 489.103(1) should be affirmed because substantial and competent evidence supports the finding that the construction project required the construction of a Building which does not fall within any exemption under Chapter 489, Florida Statutes.

Further, the exemption from the licensing requirements of a contractor under Chapter 489, Florida Statutes (1983), Section 489.103(1), are for transportation facilities or utilities and services incidental thereto, and do not allow a contractor to submit a bid for the construction of a utility project without first meeting the requirements of Chapter 489, Florida Statutes (1983).

Accordingly, the Second District Court of Appeal's decision was correct and should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by United States mail, postage prepaid, this 1st day of February, 1988, to the following:

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