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October 2, 2024

**Via Electronic Transmission**

L.J. Arnold, III  
City Attorney  
City of Green Cove Springs  
321 Walnut Street  
Green Cove Springs, Florida 32043

Re: Special Counsel Services

Dear Jim:

Pursuant to your request, Nabors, Giblin & Nickerson, P.A. (the "Firm") is pleased to provide legal advice and assistance to the City relating to a dispute over stormwater fees with the Clay County School Board. In providing these services, we will consult with you for guidance and direction.

For the professional services and specialized legal assistance contemplated herein, NG&N will perform the work on an hourly basis at our standard hourly rates as outlined below.

Firm Partners and "Of Counsel"	\$300 per hour
Firm Associates	\$275 per hour
Law Paralegals/Clerks	\$ 90 per hour

In addition to the compensation specified above, expenses incurred which are directly related to the provision of services will be reimbursed, including, but not limited to copy costs, long distance telephone costs, express mail, and on-line research expenses. Travel expenses will be reimbursed in accordance with provisions governing the travel of public officers and employees contained in Section 112.061, Florida Statutes. NG&N shall provide an itemized statement of legal services rendered and costs incurred on a monthly basis for fees and costs incurred the previous month.

L.J. Arnold, III  
October 2, 2024  
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It is proposed that Gregory Stewart and I will provide these services to the City, but other members of our firm with special expertise will also be available to the City as needed.

We appreciate your consideration of our Firm for representation in this matter. Should any additional information be required, please feel free to contact me. If the terms of the representation are acceptable, please sign a copy of this letter and return a copy to us.

Sincerely,



Heather J. Encinosa

HJE/km

cc: Gregory T. Stewart, NGN

Agreed to and accepted by:

By: \_\_\_\_\_  
City of Green Cove Springs, Florida

Date: \_\_\_\_\_

321 Walnut Street  
Green Cove Springs, FL 32043  
Phone: 904-264-3627  
Fax: 904-284-5937  
Website: [www.greencovesprings.com](http://www.greencovesprings.com)

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**From:** Blocker, Jeremiah <[jeremiah.blocker@myoneclay.net](mailto:jeremiah.blocker@myoneclay.net)>  
**Sent:** Wednesday, September 11, 2024 2:26 PM  
**To:** Jim Arnold <[cityattorney@greencovesprings.com](mailto:cityattorney@greencovesprings.com)>  
**Cc:** Megan Robiou <[megan.robious@myoneclay.net](mailto:megan.robious@myoneclay.net)>; John Steinmetz <[john.steinmetz@myoneclay.net](mailto:john.steinmetz@myoneclay.net)>  
**Subject:** Stormwater Assessment Issue

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✓  
Mr. Arnold,

I wanted to see if we could schedule a phone call or in-person meeting to discuss the stormwater assessment bills that the School District has been receiving from the City.

Would you be available to talk in the next couple of weeks? If you can respond and let me know some good times for you, I will ask Megan at our office to schedule the call/meeting.

Thank you sir.

**Respectfully,**  
**Jeremiah R. Blocker**  
SCHOOL BOARD ATTORNEY

To: Jim Arnold <[cityattorney@greencovesprings.com](mailto:cityattorney@greencovesprings.com)>

Subject: RE: Stormwater Assessment Issue

**CAUTION: This email originated from outside of the organization. . Do not click links or open attachments unless you recognize the sender and know the content is safe.**

✓ Hi Jim. We can discuss this issue, but based on the email below, I would expect the school board will assert that section 1013.371(1)(a), F.S. exempts them from being required to pay the stormwater fees. See below. However, this area of the law is not as settled as the school district may wish because it has been found that this section doesn't exempt a school district from paying tradition user fees, which include stormwater fees. See City of Clearwater, 905 So. 2d 1051 (Fla 2d DCA 2005). Since the courts view special assessments and user fees differently in this context based upon the language of 1013.371(1)(a), F.S. below, the City's stormwater fee would need to pass muster as a user fee and not a special assessment under the test set forth in the City of Gainesville stormwater case, 863 So. 2d 138 (Fla. 2003), to be enforceable against the school district. Let me know if you would like to set up a time to discuss.

Heather

**Conformity to florida building code and florida fire prevention code required for approval.**

(a) Except as otherwise provided in paragraph (b), all public educational and ancillary plants constructed by a board must conform to the Florida Building Code and the Florida Fire Prevention Code, and the plants are exempt from all other state building codes; county, municipal, or other local amendments to the Florida Building Code and local amendments to the Florida Fire Prevention Code; building permits, and assessments of fees for building permits, except as provided in [s. 553.80](#); ordinances; road closures; and impact fees or service availability fees. Any inspection by local or state government must be based on the Florida Building Code and the Florida Fire Prevention Code. Each board shall provide for periodic inspection of the proposed educational plant during each phase of construction to determine compliance with the Florida Building Code, the Florida Fire Prevention Code, and the State Requirements for Educational Facilities.

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From: Jim Arnold <[cityattorney@greencovesprings.com](mailto:cityattorney@greencovesprings.com)>

Sent: Wednesday, September 11, 2024 7:15 PM

To: Encinosa, Heather <[hencinosa@ngn-tally.com](mailto:hencinosa@ngn-tally.com)>

Subject: FW: Stormwater Assessment Issue

Heather,

The School Board has apparently not been paying the stormwater fees to the City. Is that an issue your firm could assist with given the email below. I remember readying some caselaw on this but not sure of the current status of our ability to collect.

Jim

L. J. Arnold III  
City Attorney  
City of Green Cove Springs  
321 Walnut Street  
Green Cove Springs, FL 32043  
Phone: 904-264-3627  
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## Jim Arnold

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**From:** Jim Arnold  
**Sent:** Thursday, September 19, 2024 10:57 AM  
**To:** Encinosa, Heather  
**Cc:** Steve Kennedy; Mike Null  
**Subject:** RE: Stormwater Assessment Issue/Green Cove v. School Board

Heather,

Just met with the School Board new attorney, J.B. Blocker. They are hanging their hat on the sovereign immunity argument in School Board of Miami-Dade County v. City of Miami Beach, 317 So. 3d 1203 (Fla 3<sup>rd</sup> DCA 2021) and on the special assessment or tax argument. So, we agreed to discuss with our respective teams to see if there was room for some type of agreement v. litigation. Maybe pre-suit mediation would be an avenue to seek resolution. According to our staff, they owe us over \$200,000.00 now and about \$100,000.00 yearly going forward. They apparently have 13 properties within our city limits and most are developed. They are our 8<sup>th</sup> biggest utility customer as well. They have little, if any, mitigation they could use to offset the fees.

If you have any responsive thoughts, feel free to share them with us. Again, you indicated your firm would assist if called upon to do so.

Thanks in advance.

Jim

L. J. Arnold III  
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Jurisdiction: Florida

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does a florida school board have to pay municipal user fees for stormwater utiltites for school board property

Sep 17, 2024 11:32 AM

AI Based on the case of *City of Clearwater v. School Bd. of Pinellas County*, a Florida school board is not exempt from paying municipal user fees for stormwater utilities for school board property when such fees are classified as user fees rather than special assessments. This conclusion is drawn from the court's discussion highlighting that school districts are not exempt from payment of user fees for traditional utility services, which include stormwater management services (*City of Clearwater v. School Bd. of Pinellas County*, 905 So.2d 1051 (2005)) [1].

Furthermore, the court in this case reversed a previous judgment that had declared the school board exempt from such fees, emphasizing that statutory sections 235.26 and 235.34 do not provide exemptions for school boards from paying user fees associated with traditional utility services like stormwater management (*City of Clearwater v. School Bd. of Pinellas County*, 905 So.2d 1051 (2005)) [1].

This ruling aligns with broader legal principles in Florida, where the imposition of stormwater utility fees as user fees, rather than as taxes or special assessments, has been upheld by several courts, affirming that these fees are legitimate charges for services provided and are not contingent upon actual use by the property owner.

The above response is AI-generated and may contain errors. It should be verified for accuracy.

Was this response helpful?  Yes  No

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## Cases, statutes, and regulations

### 1. *City of Clearwater v. School Bd. of Pinellas County*

District Court of Appeal of Florida, Second District. • July 20, 2005 • 905 So.2d 1051 • 2005 WL

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1677935

"...The City of Clearwater (the City) appeals a judgment declaring that the School Board of Pinellas County (the School Board) is exempt under sections 235.26 and 235.34, Florida Statutes (1999), from payment of the stormwater management utility fee imposed by the City and a money judgment in favor of the School Board for the amount of the fees collected from November 1995 through April 1998, plus interest. The City also challenges an adverse ruling on its counterclaim that sought judgment against the School Board for unpaid stormwater utility fees, plus interest. The circuit court found that the stormwater utility fee was a user fee, not a special assessment. Because the School Board is not exempt under sections 235.26 and 235.34 from the payment of user fees for traditional utility services such as stormwater management, we reverse the judgment, and we remand this case to the circuit court for further proceedings...."

"...DISCUSSION .A. School Districts and Fees for Stormwater Management Programs. Based upon the portions of the City's stormwater management ordinance presented to it on the School Board's motion for a partial summary judgment on liability in this case, the circuit court found that the stormwater utility fee imposed by the City was a user fee, not a special assessment. This finding controls the result in this case. No one suggests that sections 235.26 and 235.34 exempt school boards from payment of user fees for traditional utility services such as water and sewer service and garbage collection. Our supreme court has referred to stormwater management programs as being among the traditional utility services provided by governmental entities. *Pinellas County v. State*, 776 So.2d 262, 268 n. 11 (Fla.2001). Because school districts are not exempt from payment of user fees for traditional utility services, the circuit court erred in ruling that the School Board was exempt from paying a user fee imposed by the City for stormwater management services. See *City of Cocoa*, 711 So.2d 1322...."

"...Assuming city's stormwater utility fee was a user fee, rather than a special assessment, school board was not exempt from paying fee; stormwater management services were traditional utility services. West's F.S.A. S 403.0893; F.S.1999, SS 235.26, 235.34...."

"...Holdings: The District Court of Appeal, Wallace, J., held that: 6 assuming city's stormwater utility fee was a user fee, rather than a special assessment, school board was not exempt from paying fee, and 11 record was insufficient to permit District Court of Appeal to consider school board's argument that circuit court reached right result notwithstanding its incorrect finding that stormwater utility fee was a user fee instead of a special assessment...."

## 2. *City of Cocoa v. School Bd. of Brevard County*

District Court of Appeal of Florida, Fifth District. • June 05, 1998 • 711 So.2d 1322 • 1998 WL 288284

"...2. The Defendants are exempt from the City of Cocoa Stormwater utility fee, which is an assessment, by operation of S 235.26(1), Fla.Stat. (1995) and S 235.34, Fla.Stat. (1995). See also *School Board of Pinellas County v. City of St. Petersburg*, No. 93-844 (Fla. 6th Cir.Ct. Nov 27

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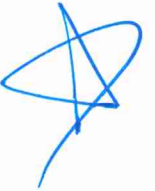
1996), rev. pending, wherein the trial court found a stormwater fee a special assessment which could not be charged against the school board and junior college...."

"..The trial court apparently dismissed the complaint on the basis that Brevard and BCC were exempt from payment of the fees under section 235.26(1), Florida Statutes (1995), which governs the payment of "impact or service availability fees." Alternatively, the trial court appears to have found that they were exempt from payment of the fees under 235.34, Florida Statutes, which related to "special assessments" on school property. In finding that these exemptions applied, the trial court apparently determined that no portion of the fees sought by Cocoa were "user" fees. At this stage of the proceedings, it is not apparent that these rulings are correct. We agree with Cocoa that the legislature appears to have intended to create a stormwater "utility" akin to water or sewer service. Appellees acknowledge that they cannot use the city water or sewer service and not pay for it. They contend, however, that they do not use the stormwater utility because they have their own stormwater management system on site and thus cannot be required to pay. The complaint, on the other hand, alleges they are "users." The lower court suggested that the appellees were "users," albeit "involuntary" users. It is impossible to decide this case without a determination of these and other facts. Accordingly, the appealed order of dismissal is reversed and the case remanded for further proceedings. REVERSED and REMANDED..."

### 3. School Board of Miami-Dade County v. City of Miami Beach

District Court of Appeal of Florida, Third District. • February 24, 2021 • 317 So.3d 1203 • 2021 WL 709763

*3 DCA*



"..In the underlying case, the City of Miami Beach sued the School Board of Miami-Dade County to demand the School Board pay municipal stormwater utility fees. The School Board moved to dismiss on the basis that sovereign immunity barred the City's claim. The trial court denied the motion to dismiss and the School Board now appeals that nonfinal order. We conclude that this case is governed by our prior precedent of City of Key West v. Florida Keys Community College, 81 So. 3d 494 (Fla. 3d DCA 2012), in which we held that a community college is protected by sovereign immunity from paying municipal stormwater utility fees because Chapters 180 and 403, the current expressions of the Legislature's authorizations for municipalities to levy such fees, did not waive sovereign immunity. Accordingly, we reverse...."

"..FACTS AND PROCEDURAL HISTORY. In May 2012, the School Board stopped paying the City stormwater fees after this Court issued its decision in Florida Keys Community College, which held that a community college, a state entity, enjoyed sovereign immunity from suit for non-payment of the City of Key West's stormwater utility fees whether the municipality claimed Chapter 180 or Chapter 403 as the basis of its authority to charge a stormwater utility fee. 81 So. 3d at 497-98...."

"..Background: City sued county school board to demand that school board pay municipal stormwater utility fees. The Circuit Court, 11th Judicial Circuit, Miami-Dade County, David C. Miller, J., denied school board's motion to dismiss which was based on sovereign immunity."

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School board appealed the non-final order..."

"...The District Court of Appeal, Logue, J., held that school board was protected by sovereign immunity from paying municipal stormwater utility fees..."

#### 4. **City of Key West v. Key West Golf Club Homeowners'**

District Court of Appeal of Florida, Third District. • May 31, 2017 • 228 So.3d 1150 • 2017 WL 2350129

"...ANALYSIS .1. Can these properties be subject to any stormwater utility fee?. Like similar statutes, the statute at issue authorizes stormwater utility fees to be paid based upon a ratepayer's contribution to the need for, and benefit from, the stormwater utility. See, e.g., S 403.031(17) (defining "stormwater utility" as "the funding of a stormwater management program by assessing the cost of the program to the beneficiaries based on their relative contribution to its need" (emphasis added)). Following this law, the Florida Supreme Court has held, "beneficiaries" of a municipal stormwater utility "can be charged." City of Gainesville, 863 So.2d at 145. To decide if the Association, Golf Course, and Hospital can be charged a utility fee, we must decide if they contribute to the need for and benefit from the stormwater management system established by the stormwater utility..."

"...ANALYSIS .1. Can these properties be subject to any stormwater utility fee?. More importantly, the legislature has enacted a law that authorizes municipalities to fund these stormwater anti-pollution management programs from utility fees charged to landholders whose properties generate stormwater runoff. See SS 403.0891(3), .031(17); Fla. Admin. Code R. 62-40.431(3). Whether or not a court agrees with the legislature's public policy to fund these services through utility fees is of no moment. It is within the province of the legislature to authorize stormwater utility fees to pay for programs necessitated by stormwater runoff. The Association, Golf Course, and Hospital improperly ask us to usurp a legislative function when they contend we should replace the legislature's public policy choice that these stormwater services should be funded by utility fees with their own suspect public policy choice that these stormwater services should be funded by taxes. In City of Gainesville, the Florida Supreme Court repeatedly cited with approval to cases holding that stormwater utility fees and similar statutorily authorized municipal utility fees were not taxes. 863 So.2d at 145-46..."

"...Holdings: On rehearing, the District Court of Appeal, Logue, J., held that: city had the authority to charge landowners a stormwater utility fee, and stormwater utility fee bore a reasonable relationship to the benefits conferred..."

#### 5. **City of Gainesville v. State, Dept. of Transp.**

District Court of Appeal of Florida, First District. • March 05, 2001 • 778 So.2d 519 • 2001 WL 209068

"...VI. While a stormwater management utility fee may be imposed as either a special

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assessment or as a service fee, based on its characteristics it is my opinion that the fee imposed by the City of Gainesville for utilization of the stormwater management utility is a service fee or user fee, which the city may lawfully impose on property of the State of Florida, Department of Transportation...."

"...VI. Courts in other jurisdictions have not hesitated to hold that a municipality's authority to set stormwater utility fees includes authority to charge a state agency or board such fees. The Colorado State Board for Community Colleges and Occupational Education (Board) argued in *City of Littleton v. State*, 855 P.2d 448 (Colo.1993), that the City of Littleton had no authority to charge the Board a stormwater utility fee. Colorado's intermediate appellate court agreed and concluded that the charges in question amounted to special assessments, just as the circuit court did in the present case. But, after first holding that the charges were valid service fees, see *id.* at 452, the Colorado Supreme Court held that the statute that granted authority to municipalities to collect utility fees conferred authority to charge state agencies like the Board. See *id.* at 454-55...."

"...Because a landowner could refuse the city's stormwater utility service and prevent liability for stormwater utility fees by containing runoff, the fees were not invalid as a tax or a special assessment. West's F.S.A. SS 403.031(17), 403.0893(1)...."

## 6. City of Gainesville v. State

Supreme Court of Florida. • September 04, 2003 • 863 So.2d 138 • 2003 WL 22052315

"...A. User Fee or Special Assessment?. We have previously recognized that the creation of a statutorily-authorized utility strongly favors the validity of the fees imposed. In *Pinellas County v. State*, 776 So.2d 262, 268 (Fla.2001) (footnote omitted), we noted that "where a governmental entity provides access to traditional utility services, this Court has not hesitated to uphold local ordinances imposing mandatory fees, regardless of whether the individual customer actually uses or desires the service." In a footnote, we cited stormwater management programs defined under section 403.031(17), Florida Statutes (1997) as one category of many statutorily-authorized programs imposing mandatory fees to recoup the costs of providing water service. *Id.* at 268 n. 11. In another footnote, we noted that water systems are equivalent to traditional utilities such as sewer systems. *Id.* at 268 n. 10. Also, in *City of Port Orange*, 650 So.2d at 4, we distinguished a transportation utility fee that we held to be a tax from stormwater utility fees, noting that "storm-water utility fees are expressly authorized by section 403.031, Florida Statutes (1993)." See also *City of Dunedin v. Contractors & Builders Ass'n*, 312 So.2d 763, 766 (Fla. 2d DCA 1975) ("The imposition of fees for the use of a municipal utility system is not an exercise of the taxing power nor is it the levy of a special assessment.") (citing *State v. City of Miami*, 157 Fla. 726, 27 So.2d 118 (1946)), quashed on other grounds, 329 So.2d 314 (Fla.1976). Therefore, the fact that the City has created a statutorily-authorized utility to provide stormwater management services militates strongly in favor of finding that the stormwater fees are user fees...."

"...A. User Fee or Special Assessment?. The City's creation of a stormwater utility, as the

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authorized, is a strong factor militating in favor of finding the stormwater fees a user fee. The City "establish(ed) stormwater management as a city utility enterprise in accordance with F.S. S 403.0893" and "establish(ed) a program of user charges for stormwater management service to be charged to all developed property within the city that contributes stormwater runoff to the city's stormwater management systems to accomplish the functions of such utility." Gainesville, Fla., Code art. V, S 27-236...."

## 7. City of Key West v. Florida Keys Community College

District Court of Appeal of Florida, Third District. • January 18, 2012 • 81 So.3d 494 • 2012 WL 126858

"..The College, which is organized and operated under Florida law, collects and treats any stormwater generated on its property with its own stormwater system, operated under a valid permit issued by the South Florida Water Management District. There is no written contract or agreement between the City and the College obligating the College to pay the City's stormwater utility fees. Nonetheless, after establishing the stormwater utility, the City billed the College for stormwater utility services. To date, under threat of enforcement penalties, including litigation, the imposition of attorney's fees for collection, a five percent per month late fee, liens, the discontinuation of utility services, and the denial of City permits, the College has paid \$160,529.60 in stormwater utility fees...."

"..In 2001, pursuant to the authority derived from sections 403.0891 and 403.0893, Florida Statutes, the City enacted Ordinance No. 01-06, creating a stormwater utility system, and establishing stormwater utility fees to fund the system. The stormwater utility fees apply to all developed property throughout the City's municipal area, including North Stock Island, where the College's main campus is located...."

## 8. Loxahatchee River Environmental Control Dist. v. School Bd. of Palm Beach County

District Court of Appeal of Florida, Fourth District. • October 29, 1986 • 496 So.2d 930 • 1986 WL 1167087

"..School board brought action for declaratory and injunctive relief against environmental control district, claiming it was statutorily exempt from certain charges for sewer system. The Circuit Court, Palm Beach County, Maurice J. Hall, J., granted relief and upheld constitutionality of statute creating that exemption. The district appealed. The District Court of Appeal, Glickstein, J., held that: (1) service availability standby and line charges were "impact fees" or "service availability fees" within meaning of statutory exemption, and (2) statute exempting public school facilities from those fees was not void for vagueness or ambiguity and did not violate due process, equal protection, or other constitutional provisions. Affirmed...."

"...II .CONSTITUTIONALITY OF SECTION 235.26(1) FLORIDA STATUTES (1981) .A .ARTICLE III, SECTION 6. The Environmental Control District Board argued at trial that either the imp

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