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**From:** Hyde, Kevin E. [KHyde@foley.com]  
**Sent:** 10/14/2019 8:20:33 PM  
**To:** Davis, Gardner F. [GDavis@foley.com]; Guyer, Richard E. [RGuyer@foley.com]  
**Subject:** FW: JEA Corporate Research

Gardner:

Counsel or JEA from Pillsbury asked us recently whether there are restrictions on JEA merging into a for-profit entity. A narrow questions. Richard's research is below. I spoke to counsel tonight and he now has a broader question. "Is there anything other than an asset that JEA would be allowed to enter into?" This will implicate the City Charter as well as I suspect Florida statutes. He now wants a comprehensive look at this.

Can you assist with this? Richard has done a lot of research but the guy wants to talk through issues with a "senior" corporate lawyer. We will probably need to do a written work product.

I don't expect a different answer than what Richard reached but it looks like they want to go through the exercise. Working with Richard, can you assist with this? This has become time sensitive.

I have been assured otherwise, but I think they are looking for a way to avoid a sale of assets so the Charter provision requiring a voter referendum for more than 10% of the assets is required.

Let's discuss tomorrow.

-Kevin E. Hyde

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**From:** Hyde, Kevin E.  
**Sent:** Monday, October 14, 2019 5:47 PM  
**To:** Amdur, Stephen B. <stephen.amdur@pillsburylaw.com>  
**Subject:** JEA Corporate Research

Steve:

See below. Let us know if you have any questions.

-Kevin E. Hyde

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**From:** Guyer, Richard E. <[RGuyer@foley.com](mailto:RGuyer@foley.com)>

**Sent:** Monday, October 14, 2019 5:30 PM

**To:** Hyde, Kevin E. <[KH Hyde@foley.com](mailto:KH Hyde@foley.com)>

**Subject:** JEA Research

Kevin,

You have asked me to research whether there is any authority regarding the merger of JEA into a for profit corporation. I have not found anything that would authorize such a transaction.

Article VII Section 10 (prohibition on pledging credit) of the Florida Constitution does not seem to contemplate mergers. The Court in *Jackson-Shaw Co. v. Jacksonville Aviation Authority* explains that, although joint ownership does not necessarily equate to joint venture or partnership, there has to be some kind of financial obligation and responsibility/control for the governmental unit to be a "joint owner" with a corporation. 8 So.3d 1076, 1093-94 (Fla. 2008).

Further, the prohibition against pledging credit refers to "the assumption by the public body of some degree of direct or indirect obligation to pay a debt of the third party". *Id.* at 1095. The Court states that "the public must be either directly or contingently liable to pay something to somebody." *Id.* I don't see that as being applicable here.

In addition, such a merger is not authorized by the Florida corporate statute. JEA is a "governmental unit acting as an instrumentality of the City of Jacksonville" *Fluid Dynamics Holdings, LLC v. City of Jacksonville*, 752 Fed. Appx 924 (11th Cir. 2018). The 2018 version of Section 607.1101 authorizes only "[o]ne or more corporations" to merge, with "corporation" defined as "a corporation for profit" incorporated under the FL corporate statute. The 2019 version of Section 607.1101 (set to take effect Jan 1, 2020) broadens this slightly, allowing domestic or foreign "eligible entities" to merge.

Under the 2019 statute, "a government or a governmental subdivision, agency or instrumentality" is expressly excluded from the definition of "eligible entity." Fla. Stat. § 607.01401(28)(b)(5). Accordingly, FL corporations cannot merge with governmental instrumentalities like JEA.

Best,  
Richard

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