Renewal of ad valorem tax by referendum or resolution

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Subject:
Renewal of ad valorem tax by referendum or resolution

Mr. Matthew S. Francis
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Emergency Medical Services District
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RE: AD VALOREM TAXATION – FIRE AND EMERGENCY DISTRICT – SPECIAL ACT – RESOLUTION – whether a fire rescue and emergency medical services district may levy an ad valorem tax at a rate above the expressly authorized 1 mill by resolution rather than referendum. Ch. 2005-329, Laws of Fla. (2005); § 191.009(1), Fla. Stat. (2017).

Dear Mr. Francis:

We have received your request for an opinion from the Attorney General asking the following question:

May the Key Largo Fire Rescue and Emergency Medical Services District, after holding a referendum to raise the millage rate above 1 mill, thereafter annually fix the millage rate at or below such new millage rate by resolution of the district board without further approval by the electors?

In sum:

Pursuant to chapter 2005-329, section 6, Laws of Florida, and section 191.009(1), Florida Statutes, any year in which the Key Largo Fire Rescue and Emergency Medical Services District wants to levy an ad valorem tax that exceeds the 1 mill authorized in chapter 2005-329, such tax must be approved in a referendum rather than by board resolution.

The Key Largo Fire Rescue and Emergency Medical Services District was created by chapter 2005-329, Laws of Florida. Under subsection 5(2), the District's Board of Commissioners is authorized to annually levy ad valorem taxes against taxable property within the district in an amount that does not exceed the limit provided in chapter 191, Florida Statutes. That limit is 3.75 mills, unless a higher amount has been authorized by law and approved by referendum.[1]

Subsection 6(1) specifically authorizes the board to levy an annual ad valorem tax in an amount not to exceed 1 mill. Under subsections 6(2) and (3), a majority of the electors in the district must approve the initial levy of such tax by referendum, but each year thereafter, the board may fix the rate of taxation by resolution so long as the rate does not exceed 1 mill.[2] If the board seeks a

millage rate above 1 mill but below the 3.75 mill limit, it must obtain approval by a majority of electors in a referendum.[3]

The preceding language of the special act expressly authorizes renewal by resolution only when the rate of taxation is 1 mill or below. There is no such provision with regard to rates above 1 mill. The same result follows from application of section 191.009, Florida Statutes, a general law that addresses the levy of ad valorem taxes in independent special fire control districts in subsection (1):

“The levy of ad valorem taxes pursuant to this section must be approved by referendum called by the board when the proposed levy of ad valorem taxes exceeds the amount authorized by prior special act, general law of local application, or county ordinance approved by referendum. Nothing in this act shall require a referendum on the levy of ad valorem taxes in an amount previously authorized by special act, general law of local application, or county ordinance approved by referendum.”

As applied to the Key Largo Fire Rescue and Emergency Medical Services District, the first sentence quoted above requires a referendum when the board seeks an ad valorem tax at a rate *above* the 1 mill authorized by the special act that created the district. Under the second sentence, no further referenda are necessary for an ad valorem tax of 1 mill or less when there has been a referendum approving such rate which was authorized in the special act, chapter 2005-329.[4]

Had the Legislature intended to allow the fire district to levy by resolution an ad valorem tax at a rate greater than 1 mill, so long as such rate was initially approved in a referendum, it would have included a provision expressing such intent in chapter 2005-329, Laws of Florida.

Accordingly, it is my opinion that under the current facts and law, the Key Largo Fire Rescue and Emergency Medical Services District must obtain approval by referendum every year in which it seeks to assess an ad valorem tax above 1 mill.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 191.009(1), Fla. Stat.

[2] “Upon the approval of a majority of the electors voting at the initial election or at an election called by the board, the rate of taxation shall thereafter be fixed annually by resolution of the board without further approval by the electors, provided the rate of taxation shall not exceed 1 mill.” Section 6(3), Ch. 2005-329, Laws of Fla.

[3] “The board shall have the authority to increase the millage rate above 1 mill only if a majority

of the electors voting in a referendum election approve the increased millage rate in an amount not to exceed the limit provided in chapter 191, Florida Statutes." *Id.*

[4] In contrast, in subsection 191.009(2), dealing with non-ad valorem assessments, no annual referendum is required unless a fire control district wishes to increase the assessment by a certain amount (as formulated in the provision) above the rate set the previous year or the rate previously set by special act or county ordinance, "whichever is more recent." *See* Op. Att'y Gen. Fla. 99-30 (1999). The Legislature chose not to include such language in subsection 191.009(1) dealing with ad valorem assessments.