Special District Group Health Insurance

Number: AGO 2017-04

Date: August 14, 2017

Subject:
Special District Group Health Insurance

August 9, 2017

Mr. Curtis L. Shenkman
Attorney for Loxahatchee River District
11891 U.S. Highway One, Suite 100
North Palm Beach, Florida 33408

RE: MULTICOUNTY INDEPENDENT SPECIAL DISTRICT – SECTION 112.08 — use of district funds, board member compensation, or board member personal funds to pay for District board members' participation in the District's group health insurance program.

Dear Mr. Shenkman:

You have requested an opinion addressing these matters:

1. Whether the Loxahatchee River Environmental Control District ("District") is authorized by section 112.08(2)(a), Florida Statutes (pertaining to group insurance for public officers, employees, and certain volunteers), or Chapter 2002-358, Laws of Florida (the enabling legislation for the District), to use District funds to pay for all or a portion of the cost for District board members to participate in the District's group health insurance program, in addition to the board member compensation which is provided as authorized by section 4(1) of Chapter 2002-358; and

2. Whether all or a portion of the compensation paid to board members under section 4(1) of Chapter 2002-358, Laws of Florida, or the private funds of the District board members may be used to pay for the board members' participation in the District's group health insurance program?

In sum:

1. The District is authorized by section 112.08(2)(a), Florida Statutes, to use District funds to pay for all or a portion of the cost for District board members to participate in the District's group health insurance program, in addition to the board member compensation which is provided as authorized by section 4(1) of Chapter 2002-358.

2. Neither section 112.08(2)(a), Florida Statutes, nor Chapter 2002-358, Laws of Florida, appears to preclude use, at the board member's direction, of all or a portion of the compensation paid to District board members (under section 4(1) of Chapter 2002-358), or use of the board members' private funds, to pay for the members' participation in the District's group health

insurance program.

The charter for the Loxahatchee River Environmental Control District is codified at Chapter 2002-358, Laws of Florida. The District—whose geographical boundaries comprise portions of Palm Beach and Martin Counties, including the Town of Jupiter, Jupiter Inlet Colony, Juno Beach, and the Village of Tequesta (generally defined as the Loxahatchee River Basin)—is established as a multicounty independent special district of the state,[1] and is thus a local agency of government.[2] "The purpose of the District is to effectively achieve water quality and water quantity management within
the Loxahatchee River Basin through the management of water supply, wastewater, and storm water drainage."[3] In implementing this purpose, the District is governed by a five-member board.[4] The District board members, who are elected by the registered voters of the District,[5] act as officers of the District.[6] The District's operation and projects may be financed through issuance of bonds and collection of assessments and ad valorem taxes.[7]

As a general rule, special districts possess only the power and authority granted to them by their enabling legislation (whether expressly granted or necessarily implied to carry out expressly-granted powers).[8] Therefore, absent an additional, independent source of statutory authority, the District may only exercise the powers granted by its enabling legislation, either expressly or by necessary implication.

Question One

The charter for the Loxahatchee River Environmental Control District provides that members of the board "shall serve with compensation in the amount of $100 per month per member, and shall be entitled to per diem and travel expenses as provided by section 112.061, Florida Statutes."[9] The charter does not address whether insurance can be provided for officers of the District (including board members). But section 112.08(2)(a), Florida Statutes—to which the District is also subject—does address this issue. Moreover, it specifies that its provisions apply "[n]otwithstanding any general law or special act to the contrary[.]"[10]

Section 112.08(2)(a), Florida Statutes, specifically authorizes a "local governmental unit" to "provide and pay out of its available funds for all or part of the premium for… health … insurance, or all or any kinds of such insurance, for the officers and employees of the local governmental unit and for health…insurance for the
dependents of such officers and employees upon a group insurance plan…."[11] Section 112.08(1), in turn, defines the term "local governmental unit," as used in that section, to include special districts.[12] Section 112.08, Florida Statutes, also authorizes the District to enter into contracts with insurance companies or professional administrators to provide such insurance; to self-insure to provide any plan for health, accident, and hospitalization coverage; or to enter into a risk management consortium to provide such coverage.[13] Based on the statute's applicability notwithstanding "any general law or special act to the contrary,"[14] the independent statutory authority granted by section 112.08 may be invoked even where, as here, a district's enabling legislation does not address the matters comprised by section 112.08.

Neither Chapter 2002-358, Laws of Florida, nor section 112.08, Florida Statutes, requires that the District board member compensation be used to make insurance payments for the members'

insurance coverage, as described in section 112.08. Instead, section 112.08(2)(a) appears to grant the District the independent power to provide, and pay for, such insurance for its officers (including board members).

Therefore, assuming that the District's group health insurance program otherwise complies with the requirements of section 112.08, Florida Statutes,[15] the Loxahatchee River Environmental Control District is authorized by section 112.08(2)(a), Florida Statutes, to use District funds to pay for all or a portion of the cost for District board members to participate in the District's group health insurance program. Payment of such cost may be in addition to the board member compensation authorized by Chapter 2002-358, Laws of Florida.[16]

Question Two

You ask whether the authorized board member compensation, itself, may be used to pay the cost of all or a portion of the premiums for such insurance, and whether the board members may make such payments from their personal funds. I am aware of no provision of the charter for the Loxahatchee River Environmental Control District which would preclude the use, at a board member's direction, of a board member's compensation to pay for insurance provided by the District.[17] Nor am I aware of any limitation on the use of the board members' personal funds for such purposes.[18]

Sincerely,

Pam Bondi
Attorney General

PB/ttlm

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[1] See § 1, Ch. 2002-358, Laws of Fla.

[2] See § 189.012(6), Fla. Stat. (2017) ("'Special district' means a unit of local government created for a special purpose…which has jurisdiction to operate within a limited geographic boundary and is created by general law, special act, local ordinance, or by rule of the Governor and Cabinet…."); see also § 112.08(1), Fla. Stat. (defining "local governmental unit" to mean, in pertinent part, "any…special district").

[3] Fla. Admin. Code R. 31-1.001(1); see generally § 6, Ch. 2002-358, Laws of Fla.

[4] See § 4, Ch. 2002-358, Laws of Fla.

[5] See id.

[6] See Fla. Admin. Code R. 31-1.002 (1) ("The Agency Head") ("The Agency Head is collectively the five (5) member Governing Board. Among themselves, the Governing Board selects a Chairman, Vice-Chairman, Secretary, Treasurer and Assistant Secretary/Treasurer

annually.”).

[7] See § 6, Ch. 2002-358, Laws of Fla.
[8] See Forbes Pioneer Boat Line v. Board of Commissioners of Everglades Drainage District, 82 So. 346, 351 (Fla. 1919); Op. Att'y Gen. Fla. 89-34 (1989).

[9] § 4(10), Ch. 2002-358, Laws of Fla.

[10] § 112.08(2)(a), Fla. Stat. (2017).

[11] § 112.08(2)(a), Fla. Stat. (2017).

[12] § 112.08(1), Fla. Stat. (2017).

[13] § 112.08(2)(a), Fla. Stat. (2017).

[14] Id.

[15] Because your letter does not provide details regarding the District’s group health insurance program, any comment regarding the program’s compliance with the requirements of § 112.08, Fla. Stat., is beyond the scope of this opinion.

[16] See Op. Att'y Gen. Fla. 04-08 (2004).

[17] See § 112.11, Fla. Stat. (2017).

[18] See Op. Att'y Gen. Fla. 04-08 (2004).