Special Districts - Assessments - Referendum

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Subject:
Special Districts - Assessments - Referendum

Ms. Mary M. Viator
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West Palm Beach, Florida 33401

RE: SPECIAL DISTRICTS – ASSESSMENTS – REFERENDUM – whether special district must hold referendum before levying non-ad valorem assessment. Chs. 189 and 298, Fla. Stat; s. 298.301, Fla. Stat.

Dear Ms. Viator:

On behalf of the Indian Trail Improvement District, an independent special district located in Palm Beach County, you have asked for my opinion on substantially the following question:

Does Chapter 189 or 298, Florida Statutes, require a referendum in order for the Indian Trail Improvement District to levy non-ad valorem assessments to maintain park improvements constructed by the district using no non-ad valorem assessments and located on county-owned land leased to the district at no cost?

In sum:

Chapters 189 and 298, Florida Statutes, do not require a referendum in order for the Indian Trail Improvement District to levy non-ad valorem assessments to maintain park improvements constructed by the district using no non-ad valorem assessments and located on county-owned land leased to the district at no cost.

The Indian Trail Water Control District (the district) is an independent special district operating in Palm Beach County, Florida. The district operates in accordance with its enabling legislation, Chapter 2002-330, Laws of Florida, and applicable provisions of Chapters 189 and 298, Florida Statutes.

According to information you have supplied to this office, in 2001, Palm Beach County leased certain land to the district under a long term lease for use as a district park. The property is leased to the district at no annual cost. The district proposes to construct park improvements on the leased site using no non-ad valorem assessments. The park is currently maintained for the benefit of district residents. After construction is complete, special benefit non-ad valorem

assessments will be levied against taxable real property within the district for park maintenance costs.

Chapter 2002-330, Laws of Florida, codifies the previously enacted special acts relating to the Indian Trail Improvement District.[1] The codification re-creates the district and re-creates and reenacts the district charter. The district's charter, section 3 et seq., Chapter 2002-330, Laws of Florida, provides that the powers of the district include "to construct and maintain recreation areas and facilities, including the authority to provide for the construction, operation, and maintenance of such recreation areas and facilities; provide recreation and playground equipment; . . . and provide any other programs and elements of recreation areas and facilities[.]"[2]

Chapter 2002-330, Laws of Florida, also "preserve[s] all district authority, including the authority to annually assess and levy taxes or non-ad valorem assessments against all assessable property in the district."[3] The powers, functions, and duties of the district regarding non-ad valorem assessments and other revenue-raising capabilities "shall be as set forth in chapters 189, 197, and 298, Florida Statutes, this act, or any other applicable general or special law, as they may be amended from time to time."[4] The charter requires that non-ad valorem assessments be collected as provided in Chapters 197 and 298, Florida Statutes.[5]

As a statutorily created entity, the district may only exercise such powers as have been expressly granted by statute or ordinance or must necessarily be exercised in order to carry out an express power. Unlike counties and municipalities, which have been granted home rule powers, water control districts possess no inherent or home rule powers. Created by statute for specific limited purposes, such districts may exercise only those powers and authority as have been granted by law.[6] Thus, you ask whether Chapters 189 and 298, Florida Statutes, require the district to conduct a referendum to approve the levy of any special assessments.

Chapter 298, Florida Statutes, requires that special districts subject to the terms of the chapter implement district infrastructure and works projects pursuant to a water control plan.[7] The notice, hearing, and final adoption of any amendment to a water control plan must comply with the provisions of Chapter 298, Florida Statutes.[8] You advise that the district's existing Water Control Plan will be amended as required by section 298.301, Florida Statutes, to incorporate the county lease land and improvements.

Before adopting a water district plan amendment, the statutes require that the board of supervisors of the district adopt a resolution to consider the proposed plan amendment and hold a public hearing on the plan amendment. Section 298.301(2), Florida Statutes, provides the form for the public notice to be given and prescribes the length of time such notice must be published.[9] At the conclusion of the public hearing, the board of supervisors may determine to proceed with the process for a plan amendment and direct the district engineer to prepare an engineer's report outlining the property involved, determining benefits and damages, and estimating the cost of implementing the improvements associated with the plan amendment. A final hearing on approval of the proposed plan amendment shall be held at a regularly-scheduled board of supervisors meeting 25 - 60 days after the last scheduled publication of the notice of filing the engineer's report with the district secretary.[10]

After approval of the engineer's report by the board of supervisors, and the proposed plan amendment has been finally adopted, the board of supervisors is authorized to levy a non-ad valorem assessment on all lands in the district to which benefits have been assessed "to pay the costs of the completion of the proposed works and improvements, as shown in the adopted plan or plan amendment and in carrying out the objectives of the district[.]"[11] The district is also authorized to levy a maintenance assessment:

"Under s. 298.54, the board of supervisors may also levy a maintenance assessment on all lands in the district to which benefits have been assessed as may be necessary to operate and maintain the district works and activities and to defray the current expenses of the district."[12]

Section 298.54, Florida Statutes, provides for a "maintenance tax" to maintain and preserve the improvements made pursuant to this chapter and to repair and restore the same.

Nothing in the statutes discussed above imposes a referendum requirement on the district for the levy of non-ad valorem assessments to maintain the park improvements outlined in your request.

You also ask whether provisions of Chapter 189, Florida Statutes (the "Uniform Special District Accountability Act"),[13] impose a referendum requirement on the district for the levy of non-ad valorem assessments to maintain park improvements. As an independent special district, the Indian Trail Improvement District is subject to the provisions of Part III, Chapter 189, Florida Statutes, and to the general provisions in Part I of that chapter. Section 189.03(3), Florida Statutes, makes it clear that the Legislature intended, with the adoption of Part III of Chapter 189, to "provide by general law for the uniform operation, exercise of power, and procedure for termination of any such independent special district." As provided in the act, the charter of an independent special district must address:

"The powers, functions, and duties of the district regarding ad valorem taxation, bond issuance, other revenue-raising capabilities, budget preparation and approval, liens and foreclosure of liens, use of tax deeds and tax certificates as appropriate for non-ad valorem assessments, and contractual agreements."[14]

As discussed herein, the charter for the Indian Trail Improvement District includes no requirement that the levy of non-ad valorem assessments be subject to a referendum and nothing in either Part I or Part III, Chapter 189, Florida Statutes, establishes such a requirement.

In sum, it is my opinion that Chapters 189 and 298, Florida Statutes, do not require a referendum in order for the Indian Trail Improvement District to levy non-ad valorem assessments to maintain park improvements constructed by the district using no non-ad valorem assessments and located on county-owned land leased to the district at no cost.

Sincerely,

Pam Bondi
Attorney General

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[1] Pursuant to s. 189.019, Fla. Stat., each special district must codify its special acts into a single act for reenactment by the Legislature by Dec. 1, 2004.

[2] Section 3, s. 5(1), Ch. 2002-330, Laws of Fla.

[3] Section 1, *supra* n.2.

[4] Section 3, s. 1(2), *id*.

[5] Section 3, s. 1(13), *supra* n.2; Ch. 197, Fla. Stat., deals with tax collections, sales, and liens, and provides, in s. 197.3632, Fla. Stat., the method for imposing and collecting non-ad valorem taxes. Nothing in ss. 197.3631, 197.3632, or 197.3635, Fla. Stat., dealing with non-ad valorem taxes requires a referendum.

[6] *See, e.g.,* Op. Att'y Gen. Fla. 90-63 (1990) (in the absence of a statute authorizing the recall of a supervisor of a water control district, the landowners of such a district are not authorized to establish procedures for the recall of a supervisor); Op. Att'y Gen. Fla. 81-17 (1981). *And see Forbes Pioneer Boat Line v. Bd. of Comm'rs of Everglades Drainage Dist.*, 82 So. 346 (Fla. 1919).

[7] Section 298.301(1), Fla. Stat.

[8] *Id.*

[9] Section 298.301(2), Fla. Stat.

[10] *Id.*

[11] Section 298.305(1), Fla. Stat.

[12] *Id.*

[13] *See* s. 189.01, Fla. Stat., providing the title for the act.

[14] Section 189.031(3)(b), Fla. Stat.