Charter Schools - Municipalities - Special Assessment

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Subject:
Charter Schools - Municipalities - Special Assessment

Ms. Victoria Méndez
City Attorney
City of Miami
Office of the City Attorney
444 Southwest 2nd Avenue, Suite 945
Miami, Florida 33130-1910

RE: CHARTER SCHOOLS – MUNICIPALITIES – SPECIAL ASSESSMENT – EXEMPTION – whether the city may levy a special assessment against the property of a charter school.

Dear Ms. Méndez:

On behalf of the City of Miami, you have asked for an opinion on the following question:

May a municipality levy a special assessment against the property of a charter school under Chapter 170 of the Florida Statutes?

In sum:

Section 1002.33(18)(d), Florida Statutes, specifically exempts charter schools from assessments for special benefits; hence, the city may not levy a special assessment against the school.

You state that the City of Miami proposes to levy a special assessment against the property of a charter school. Section 1002.33(18)(d), Florida Statutes, provides:

"(d) *Charter school facilities are exempt from* assessments of fees for building permits, except as provided in s. 553.80; fees for building and occupational licenses; impact fees or exactions; service availability fees; and assessments for special benefits." (e.s.)

You contend that section 170.201(2), Florida Statutes, contains an exception to the general rule stated in section 1002.33(18)(d), Florida Statutes. Section 170.201(2), Florida Statutes, provides, in pertinent part:

"*Property owned or occupied* by a religious institution and used as a place of worship or education; *by a public or private elementary, middle, or high school*; or by a governmentally financed, insured, or subsidized housing facility that is used primarily for persons who are elderly or disabled *shall be exempt from any special assessment levied by a municipality to fund any service if the municipality so desires*." (e.s.)

You suggest that the final phrase in section 170.201(2) – "if a municipality so desires" – gives municipalities the discretion to choose whether to recognize an exemption from a special assessment for a charter school.[1]

In 2006, the Fifth District Court of Appeal considered whether a charter school was subject to a special assessment levied by a community development district located in Osceola County, in *Remington Community Development District v. Education Foundation of Osceola*.[2] The charter school claimed it was exempt from special assessments based upon a statute in the Education Code,[3] but the court pointed out that such provision, as well as most of the statutes in the Code, did not apply to charter schools.[4] The court considered the provision that you rely upon – section 170.201(2), Florida Statutes – in a footnote, observing that it was "not a model of legislative clarity," and that it appeared to give the levying authority the discretion whether to impose an assessment against school property.[5] This is consistent with your interpretation.

The court concluded that a charter school was not exempt from special assessments, because "the legislature has failed to create a statutory exemption for charter schools."[6] The court noted that the Legislature had expressly exempted charter schools from being subject to ad valorem taxation in section 1002.33(18)(c), Florida Statutes, and from impact fees and service availability fees in section 1002.33(18)(d), Florida Statutes. Based upon this, the court observed: "[H]ad the legislature intended to create a similar exemption from special assessments, it would have done so expressly."[7]

The Legislature thereafter did create an express exemption for charter schools when it amended section 1002.33(18)(d), Florida Statutes, in 2007, to add that charter school facilities are exempt from "assessments for special benefits."[8]

Any ambiguity or possible conflict between sections 1002.33(18)(d) and 170.201(2), Florida Statutes, is resolved by general rules of statutory interpretation. The Legislature is presumed to intend that laws will operate harmoniously, such that a specific statute addressing a particular subject will control over a more general statute addressing the same subject.[9] "[T]he specific statute is seen as an exception to the general statute."[10] In addition, in the event of inconsistency between statutes, "the last expression of legislative will prevails."[11] Section 170.201(2), Florida Statutes, is a general provision addressing exemptions from assessments for a variety of public facilities "if the municipality so desires," and was enacted in 1996. In contrast, section 1002.33(18)(d), Florida Statutes, addresses only charter schools, provides an express and definite exemption, and was added in 2007.

Therefore, it is my opinion that section 1002.33(18)(d), Florida Statutes, controls and prohibits the City of Miami from levying a special assessment against a charter school.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 1002.33(1), Fla. Stat., provides that “[a]ll charter schools in Florida are public schools.”

[2] 941 So. 2d 15 (Fla. 5th DCA 2006).

[3] Section 1013.51(1)(a), Fla. Stat.

[4] Section 1002.33(16)(a), Fla. Stat., exempts charter schools from all the provisions in Chs. 1000 through 1013, Fla. Stat., except for those enumerated in the statute.

[5] 941 So. 2d at 17 n.1.

[6] *Id.* at 16.

[7] *Id.* at 17 n.3. On motion for rehearing, the Fifth District granted the charter school’s motion to certify two questions of great public importance, one of which asked: “Are charter schools, which are deemed by statute to be public schools, exempt from special assessments?” *Id.* at 18. The Florida Supreme Court denied review. *Educ. Found. of Osceola v. Remington Cmty. Dev. District*, 946 So. 2d 1069 (Fla. 2006).

[8] In the session law that contained the assessment amendment, the Legislature singled out the provision amending paragraph (18)(d) to apply retroactively to July 1, 1996, ten years earlier. Ch. 2007-234, s. 10, Laws of Fla.

[9] *See Palm Beach Canvassing Bd. v. Harris*, 772 So. 2d 1273, 1287 (Fla. 2000); *McKendry v. State*, 641 So. 2d 45, 46 (Fla. 1994).

[10] *Stevens v. State*, 127 So. 3d 668, 669-70 (Fla. 1st DCA 2013).

[11] *Askew v. Schuster*, 331 So. 2d 297, 300 (Fla. 1976). *See also In re Sepe*, 421 So. 2d 27, 28 (Fla. 3d DCA 1982).