Infrastructure Surtax -- Emergency Generators

Number: AGO 2016-02

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Subject:
Infrastructure Surtax -- Emergency Generators

Mr. Alan S. Zimmet, B.C.S.
City Attorney
City of Largo
Post Office Box 296
Largo, Florida 33779-0296

RE: INFRASTRUCTURE SURTAX – EMERGENCY GENERATORS – MUNICIPALITY – using infrastructure surtax to fund purchase of emergency generators, power source units, and associated site improvements and upgrades, as fixed capital expenditure or outlay. s. 212.055(2), Fla. Stat.

Dear Mr. Zimmet:

As City Attorney for the City of Largo, you have asked for my opinion on the following question:

May the City of Largo use proceeds from the local government infrastructure surtax collected pursuant to section 212.055(2), Florida Statutes, to fund the purchase of emergency generators and Uninterruptible Power Source units for the city's Municipal Complex, and to fund site improvements and upgrades necessary to activate and utilize this equipment?

In sum:

Emergency generators and Uninterruptible Power Source units, and the site improvements and electrical system upgrades necessary to ensure proper functioning of such equipment within the Municipal Complex, constitute infrastructure under section 212.055(2), Florida Statutes, which may be acquired using funds from the Largo infrastructure surtax.

Section 212.055(2), Florida Statutes, authorizes local governments to enact an ordinance for approval by electors that would levy a discretionary sales surtax of .5 percent or 1 percent, to be used "to finance, plan, and construct infrastructure[,]" among other uses, as stated in subsection (2)(d)1. The statute defines "infrastructure" in subsection (2)(d)1. as:

"a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities that have a life expectancy of 5 or more years and any related land acquisition, land improvement, design, and engineering costs."

Although "fixed capital expenditure" and "fixed capital outlay" are not defined in Chapter 212, Florida Statutes, they are defined in Chapter 216, Florida Statutes, which relates to state

planning and budgeting. When the Legislature uses the identical words or phrases in different chapters of the Florida Statutes, we may assume that it intended the terms to mean the same thing.[1]

Under section 216.011, Florida Statutes:

“(m) ‘Expenditure’ means the creation or incurring of a legal obligation to disburse money.

* * *

(p) ‘Fixed capital outlay’ means the appropriation category used to fund real property (land, buildings, including appurtenances, fixtures and fixed equipment, structures, etc.), including additions, replacements, major repairs, and renovations to real property which materially extend its useful life or materially improve or change its functional use and including furniture and equipment necessary to furnish and operate a new or improved facility, when appropriated by the Legislature in the fixed capital outlay appropriation category.”

It may also be useful to consider the common understanding and definitions of the component parts of the phrases, “fixed capital expenditure” and “fixed capital outlay.”[2] The term “fixed capital” refers to “money invested in fixed assets, such as land and machinery,” and “fixed asset” refers more specifically to a “long-term” item that is owned and has value, such as “equipment, land, or an industrial plant.”[3] In order to satisfy the requirements of section 212.055(2), Florida Statutes, the asset must have a life expectancy of five years or longer.

Based upon the provisions and definitions quoted above, section 212.055(2), Florida Statutes, permits a local government to seek voter approval of a sales surtax that will be used to replace, perform major repair of, or renovate long-term fixed assets in a public facility, such as machinery and equipment, in order to materially extend the property’s useful life or improve its functional use. This includes the acquisition of equipment necessary to implement the improvements.

You state in your memorandum of law that the city’s main offices are housed in its Municipal Complex, including the city hall, the Largo Police Department, the 911 Communications Center, and the Emergency Operations Center. There are currently five generators used for backup emergency power within the Municipal Complex, three of which have far exceeded their useful life expectancy. The remaining two are smaller and capable of providing only limited resources and are within the typical 20-year generator replacement cycle. In addition, there are three Uninterruptible Power Source units, all of which have reached the end of their useful lives and are no longer supported by the manufacturer. Finally, the electrical system itself has never been comprehensively updated, and its components that manage the emergency power supply are not compatible with power generated by new technology. You assert that substantial upgrades to the electrical system are necessary before new emergency power equipment can be utilized.

The condition of these power sources led the city to engage an engineering firm to evaluate the emergency backup power system and make any necessary recommendations for improvements to meet current and future needs of the Municipal Complex. You were informed that the city should purchase two 750 KW power generators that use internal combustion engines and include an advanced distribution system. There would also be new Uninterrupted Power Supply

units to provide battery backup power for the electrical system in the Municipal Complex, with a separate unit dedicated to the 911 Communications Center. The equipment would be incorporated as fixtures in the Municipal Complex property and buildings. This new equipment would allow the complex to operate in an emergency situation with little or no interruption in its power supply and would have the ability to specifically divert energy to critical operations during an emergency or disaster while still conserving power.

Based on the condition of the power sources that you describe, replacement of the outdated fixed machinery and equipment for generating and managing emergency backup power will materially improve the functional use of the Municipal Complex. The machinery and equipment purchased will have a life expectancy of five or more years. Associated site improvements and electrical system upgrades are equally necessary to implement the emergency machinery and equipment replacements. Accordingly, the items described properly constitute infrastructure under section 212.055(2), Florida Statutes, and it is my opinion that proceeds from the local government infrastructure surtax would properly be used to purchase the machinery, equipment, and associated improvements for the Municipal Complex.

Sincerely,

Pam Bondi
Attorney General

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[1] *Goldstein v. Acme Concrete Corp.*, 103 So. 2d 202, 204 (Fla. 1958). *And see* Op. Att'y Gen. Fla. 83-32 (1983).

[2] When a statute does not specifically define words of common usage, such words must be given their plain and ordinary meaning. *See Southeastern Fisheries Association, Inc. v. Department of Natural Resources*, 453 So. 2d 1351 (Fla. 1984).

[3] Black's Law Dictionary, "fixed capital" & "fixed asset" (within definition of "capital asset"), http://web2.westlaw.com (10th ed. 2014). These dictionary definitions taken from the same source relied upon in prior Attorney General Opinions addressing this subject have changed slightly.