Water and Sewer Districts - Special Assessments

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Subject:
Water and Sewer Districts - Special Assessments

Mr. Terry J. Harmon
General Counsel
Big Bend Water Authority
123 North Monroe Street
Tallahassee, Florida 32301

RE: WATER AND SEWER DISTRICTS – COUNTIES – SPECIAL ASSESSMENTS – LIENS – authority of water district created by interlocal agreement to use lien provisions in Chapter 153, Florida Statutes. ss. 153.67, 163.01, Fla. Stat.

Dear Mr. Harmon:

On behalf of the Big Bend Water Authority, you ask the following question:

May the Big Bend Water Authority utilize the lien provisions in section 153.67, Florida Statutes, and, if so, may a lien be imposed for charges to a customer for damages to the authority's water and sewer property?

In sum:

The lien provision in section 153.67, Florida Statutes, may only be used by water and sewer districts created pursuant to Part II, Chapter 153, Florida Statutes, and, therefore, is not available to the Big Bend Water Authority which was created by an interlocal agreement under Part I, Chapter 163, Florida Statutes.

You state that the Big Bend Water Authority (authority) was created by an interlocal agreement between Taylor County and Dixie County pursuant to Part I, Chapter 163, Florida Statutes. The purpose of the district is to provide water and sewer services to customers located in unincorporated areas of both counties. The authority's governing board is contemplating the adoption of policies to address unpaid fees, rates, and charges for water and sewer services, including charges for damages to authority water and sewer property. The board questions whether the authority has the power to attach a lien for unpaid fees or for damages to authority property as provided in section 153.67, Florida Statutes.[1]

Part II, Chapter 153, Florida Statutes, is the "County Water and Sewer District Law."[2] Section 153.53, Florida Statutes, sets forth the procedure for a board of county commissioners to establish one or more water and sewer districts in unincorporated contiguous areas of the county. As an alternative means to create a district, a petition signed by persons owning not less

that 10 percent of the property within the boundaries of a proposed district may be filed with the property appraiser, requesting the county commission to call and provide for a referendum election to determine whether such district should be created and call for the election of a governing board.[3]

Pursuant to section 153.62(4), Florida Statutes, districts created pursuant to the act are, among other things, authorized:

“To levy and assess ad valorem taxes without limitation of rate or amount on all taxable property within said district for the purpose of paying principal of and interest on any general obligation bonds which may be issued for the purposes of this law, not in excess of the total amount of such general obligation bonds provided for in subsection (3).”[4]

Moreover, a Chapter 153 district may

“fix and collect rates, fees and other charges to persons or property or both for the use of the facilities and services provided by any water system or sewer system or both and to fix and collect charges for making connections with any such water system or sewer system and to provide for reasonable penalties on any users or property for any such rates, fees or charges that are delinquent.”[5]

Section 153.67, Florida Statutes, recognizes:

“In the event that the fees, rates or charges for the services and facilities of any water or sewer system shall not be paid as and when due, any unpaid balance thereof and all interest accruing thereon shall be a lien on any parcel or property affected thereby. Such liens shall be superior and paramount to the interest on such parcel or property of any owner, lessee, tenant, mortgagee or other person except the lien of county taxes and shall be on a parity with the lien of any such county taxes. In the event that any such service charge shall not be paid as and when due and shall be in default for thirty days or more the unpaid balance thereof and all interest accrued thereon, together with attorneys fees and costs, may be recovered by the district in a civil action, and any such lien and accrued interest may be foreclosed or otherwise enforced by the district by action or suit in equity as for the foreclosure of a mortgage on real property.”

The “Water and Sewer District Law” further states that a district “may provide for the construction or reconstruction of assessable improvements as defined in s. 153.52, and for the levying of special assessments upon benefited property for the payment thereof, *under the provisions of this section*.”[6] (e.s.) Such assessments are collected by the tax collector of the county in which the district is located and “shall constitute a lien upon the property so assessed from the date of confirmation of the resolution ordering the improvement, of the same nature and to the same extent as the lien for general county taxes falling due in the same year or years in which such assessments or installments thereof fall due . . . .”[7]

Section 153.62(10), Florida Statutes, provides that a district created under Chapter 153 may “join with any other district or districts, cities, towns, counties or other political subdivisions, public agencies or authorities in the exercise of common powers.”

As noted above, however, the Big Bend Water Authority was created by interlocal agreement under Chapter 163, Florida Statutes. While the Water and Sewer District Law recognizes that a district created under its provisions may enter into an interlocal agreement with an authority, they may do so only in the exercise of a common power. There is nothing contained in the statutes which indicates that an authority created by interlocal agreement under Chapter 163 which enters into an interlocal agreement with a district created under the Water and Sewer District Law would be imbued with the same powers as a Chapter 153 district as a result of the contractual relationship. Moreover, while water and sewer districts created under Chapter 153, Florida Statutes, are authorized to levy and assess ad valorem taxes, section 163.01(7)(c), Florida Statutes, states:

"No separate legal or administrative entity created by an interlocal agreement shall possess the power or authority to levy any type of tax within the boundaries of any governmental unit participating in the interlocal agreement, to issue any type of bond in its own name, or in any way to obligate financially a governmental unit participating in the interlocal agreement. . . ."

As an administrative agency created under the terms of Chapter 163, Florida Statutes, the Big Bend Water Authority may exercise only those powers which are expressly granted under its empowering legislation or by implication those necessary to carry out its express power.[8] There is no apparent or implied power contained in Chapter 163, Florida Statutes, for the authority to attach a lien to property which is delinquent in its payments or for damage to authority property. Moreover, administrative agencies are constrained not to expand their authority beyond that provided in the statutory grant.[9]

Accordingly, it is my opinion that the Big Bend Water Authority may not utilize the lien provisions in section 153.67, Florida Statutes.

Sincerely,

Pam Bondi
Attorney General

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[1] There is no assertion or indication that the Big Bend Water Authority was created pursuant to the provisions in Part II, Ch. 153, Fla. Stat., governing county water and sewer districts.

[2] Section 153.50, Fla. Stat.

[3] Section 153.53(2)(a) and (c), Fla. Stat.

[4] Section 153.62(3), Fla. Stat., provides that "the total amount of all general obligation indebtedness of the district issued pursuant to this law shall not exceed 15 percent of the assessed value of the taxable property in the district at the time of the creation of such district, to be ascertained by the assessed valuations for county taxes in effect at the time of the creation of such district."

[5] Section 153.62(6), Fla. Stat.

[6] Section 153.73(1), Fla. Stat.

[7] Section 153.73(11)(c), Fla. Stat.

[8] *See State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So. 2d 628 (Fla. 1st DCA 1974), *cert. dismissed*, 300 So. 2d 900 (Fla. 1974).

[9] *See State, Department of Environmental Regulation v. Falls Chase Special Taxing District*, 424 So. 2d 787 (Fla. 1st DCA 1982), *pet. for rev. den.*, 436 So. 2d 98 (Fla. 1983); *Seitz v. Duval County School Board*, 366 So. 2d 119 (Fla. 1st DCA 1979); *Department of Transportation v. James*, 403 So. 2d 1066 (Fla. 4th DCA 1981).