School districts, additional millage

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Subject:
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Mr. Dirk M. Smits
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RE: SCHOOL DISTRICTS--TAXATION--MILLAGE--AD VALOREM TAXATION--authority of school district to impose additional ad valorem tax millage. ss. 1011.71 and 1011.73, Fla. Stat.

Dear Mr. Smits:

On behalf of the School Board of Monroe County, you ask the following question:

May voters approve additional funding pursuant to section 1011.73(1), Florida Statutes, for two years, without voiding a previously approved increase under section 1011.73(2), Florida Statutes?

In sum:

Voters may approve additional school district tax millage pursuant to section 1011.73(1), Florida Statutes, for two years, without voiding a previously approved increase in tax millage under section 1011.73(2), Florida Statutes.

You state that on January 31, 2012, the voters of Monroe County approved a .5 mill tax increase pursuant to section 1011.73(2), Florida Statutes, for four years. The school board questions whether another referendum for additional tax revenues may be held pursuant to section 1011.73(1), Florida Statutes, without voiding the millage adopted pursuant to section 1011.73(2), Florida Statutes.

Section 9(a), Article VII, Florida Constitution, authorizes school districts to levy ad valorem taxes, and if authorized by general law to levy other taxes, for their respective purposes. Section 9(b) of Article VII limits the levy of ad valorem taxes for school purposes to 10 mills, but specifically excludes "taxes levied for the payment of bonds and *taxes levied for periods not longer than two years* when authorized by vote of the electors who are the owners of freeholds therein not wholly exempt from taxation" from the millage limitation. (e.s.) School boards are authorized by section 1011.73, Florida Statutes, to call for district millage elections. Subsection (2) of the statute provides:

"The district school board, pursuant to resolution adopted at a regular meeting, shall direct the county commissioners to call an election at which the electors within the school district may approve an ad valorem tax millage as authorized under s. 1011.71(9). Such election may be held at any time, *except that not more than one such election shall be held during any 12-month period.* Any millage so authorized shall be levied for a period not in excess of 4 years or until changed by another millage election, whichever is earlier. If any such election is invalidated by a court of competent jurisdiction, such invalidated election shall be considered not to have been held." (e.s.)

Section 1011.71(9), Florida Statutes, provides:

"In addition to the maximum millage levied under this section and the General Appropriations Act, a school district may levy, by local referendum or in a general election, *additional millage* for school operational purposes up to an amount that, when combined with nonvoted millage levied under this section, does not exceed the 10-mill limit established in s. 9(b), Art. VII of the State Constitution. Any such levy shall be for a maximum of 4 years and shall be counted as part of the 10-mill limit established in s. 9(b), Art. VII of the State Constitution. Millage elections conducted under the authority granted pursuant to this section are subject to s. 1011.73. Funds generated by such additional millage do not become a part of the calculation of the Florida Education Finance Program total potential funds in 2001-2002 or any subsequent year and must not be incorporated in the calculation of any hold-harmless or other component of the Florida Education Finance Program formula in any year. If an increase in required local effort, when added to existing millage levied under the 10-mill limit, would result in a combined millage in excess of the 10-mill limit, any millage levied pursuant to this subsection shall be considered to be required local effort to the extent that the district millage would otherwise exceed the 10-mill limit." (e.s.)

As you have indicated, Monroe County has approved an increase in ad valorem tax millage pursuant to section 1011.73(2), Florida Statutes, in January of this year. The plain language of the statute, therefore, precludes another such election to alter the millage under the section for 12 months. Hence, the board wishes to investigate the possibility of imposing additional millage pursuant to section 1011.73(1), Florida Statutes. That section provides:

"The district school board, pursuant to resolution adopted at a regular meeting, shall direct the county commissioners to call an election at which the electors within the school districts may approve an ad valorem tax millage as authorized in s. 9, Art. VII of the State Constitution. Such election may be held at any time, except that not more than one such election shall be held during any 12-month period. Any millage so authorized shall be levied for a period not in excess of 2 years or until changed by another millage election, whichever is the earlier. In the event any such election is invalidated by a court of competent jurisdiction, such invalidated election shall be considered not to have been held."

This section recognizes the school district’s authority under section 9(b), Article VII of the Florida Constitution to have additional millage for up to two years approved by referendum which is not subject to the 10-mill cap.[1]

Thus, it would appear that the Legislature has provided two distinct methods by which a school

district may obtain *ad valorem* tax millage with voter approval. There is nothing in the statute which would indicate that the two subsections are mutually exclusive. In discussions with the Florida Department of Education, this office has been advised that the department is in agreement that subsections (1) and (2) of section 1011.73, Florida Statutes, operate independently.

It is a general rule of statutory construction that when two statutes relate to common things or have a common or related purpose, they are said to be *pari materia*, and where possible, the construction should be adopted that best harmonizes and reconciles the statutory provisions so as to preserve the force and effect of each.[2] It would appear, therefore, that section 1011.73(2), Florida Statutes, provides a means to impose tax millage in addition to the millage authorized under section 1011.73(1), Florida Statutes, rather than imposing a tax millage in its stead. Nothing within section 1011.73(1) or section 1011.73(2), Florida Statutes, references a limitation upon the millage proposed in the other.

In light of the above discussion, it is my opinion that the voters of a county may approve additional *ad valorem* tax millage pursuant to section 1011.73(1), Florida Statutes, without voiding a tax millage that has already been approved under section 1011.73(2), Florida Statutes. Obviously, this opinion expresses no view on the merits of a school district's decision to put such a matter before the voters.

Sincerely,

Pam Bondi
Attorney General

PAB/tals

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[1] *See* s. 9(b), Art. VII, Fla. Const., excepting from the 10-mill cap taxes levied for periods not longer than two years when authorized by vote of the electors.

[2] *See Ideal Farms Drainage Dist. v. Certain Lands*, 19 So. 2d 234 (Fla. 1944); *State ex rel. Ashby v. Haddock*, 140 So. 2d 631 (Fla. 1st DCA 1962).