Special Districts -- Public Funds

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Subject:
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Mr. Wayne E. Flowers
Attorney for the Lake Asbury Municipal
Services District
315 South Monroe Street, Suite 830
Tallahassee, Florida 32301

RE: SPECIAL DISTRICTS – PUBLIC FUNDS – LAKE ASBURY MUNICIPAL SERVICE BENEFIT DISTRICT – authority to purchase land with boat ramp and allow public use. s. 10, Art. VII, Fla. Const.

Dear Mr. Flowers:

On behalf of the Lake Asbury Municipal Services District, you ask substantially the following questions:

1. May the Lake Asbury Municipal Services District acquire parcels of land with boat ramps which, in addition to providing access to lakes for district purposes, would provide access to lot owners within the district?

2. If so, must the district allow the general public to use the boat ramps?

In sum:

1. The Lake Asbury Municipal Services District may acquire parcels of land with boat ramps should the district's governing board determine that such acquisition primarily facilitates the purpose of maintaining the lakes and dams under the district's jurisdiction.

2. While the incidental use of the boat ramps by the general public would not raise concerns regarding the propriety of acquiring and maintaining the property for district purposes, restricting the use to lot owners within the district could be seen as an expenditure of public funds in order to facilitate the private use of the boat ramps for select individuals and thus prohibited.

Question One

Chapter 86-392, Laws of Florida (1986), creates the Lake Asbury Municipal Services District (district). [1] The purpose of the district is the "continuing maintenance of the lakes and dams known as Lake Asbury, South Lake Asbury, and Lake Ryan in Clay County, Florida." [2] Among the powers granted to the district's governing board is the authority to "purchase, hold, lease,

sell, or otherwise acquire and convey such real and personal property and interest therein as may be necessary or proper to carry out the purpose of this act" and to "acquire, construct, operate, maintain, equip, improve, extend, and enlarge capital projects within or without the district for the purposes of enabling the district to perform the specialized public functions or services as herein provided[.]" [3] (e.s.)

The enabling legislation for the district grants authority to acquire property and expend district funds for capital projects in carrying out the purpose of the district, *i.e.*, maintaining the lakes and dams under the district's jurisdiction. This limitation reiterates the long-standing interpretation by Florida courts and this office that the exercise of such powers is limited to carrying out expressly stated purposes. As a statutorily created entity, the district has only such powers and authority as have been expressly granted by law or may be necessarily implied therefrom in order to carry out an expressly granted power. [4] Any reasonable doubt as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof. [5] The implied powers accorded to administrative agencies must be indispensable to powers expressly granted, that is, those powers that are necessary or fairly or reasonably implied as an incident to those powers. [6]

There is no doubt that the district has the authority to acquire property such as parcels of land and expend funds for capital projects such as boat ramps when such actions fulfill the district's purpose of maintaining the lakes and dams within the district. It would appear that access to the lakes would be necessary to facilitate their maintenance and that of the dams. [7] Such a determination, however, must be made by the governing body of the district and cannot be delegated to this office. [8]

Question Two

The issue of whether boat ramps acquired and maintained by the district must be open to the general public or may be restricted to lot owners within the district requires a discussion of the appropriate expenditure of public funds. [9] Article VII, section 10, Florida Constitution, prohibits the state and its subdivisions from using their taxing power or pledging public credit to aid any private person or entity. The purpose of this constitutional provision is "to protect public funds and resources from being exploited in assisting or promoting private ventures when the public would be at most only incidentally benefited." [10] If the expenditure primarily or substantially serves a public purpose, however, the fact that the expenditure may also incidentally benefit private individuals does not violate Article VII, section 10. [11]

In order to satisfy Article VII, section 10, Florida Constitution, the expenditure of district funds must be for a public purpose. This office, in determining whether public funds may be expended for improvements to private property such as private roads, has considered whether the governmental entity has a property right or interest in such property or whether the public has an easement or right to use the property.

For example, in Attorney General Opinion 79-14, this office concluded that the expenditure of public funds by a municipality to repair or maintain private streets in which the municipality has no property rights or interest, and over which the public has no easement or right of use, would appear to contravene the public purpose requirements of Article VII, section 10, Florida

Constitution.[12] Similarly, this office in Attorney General Opinion 85-101 concluded that public funds could not be used to maintain a private bridge that was not open to or set apart for the public and upon which the public had no right to travel.

In Northern Palm Beach County Water Control District v. State, [13] the Supreme Court of Florida concluded that Article VII, section 10, Florida Constitution, did not prohibit the water control district from issuing bonds to finance on-site road improvements in a district created for the purpose of draining and reclaiming the land. In reaching its decision, the Court relied on the fact that the district's taxing power was not involved, there was no pledge of the district's credit, the Legislature had set forth a declaration of the public purpose to be served, and the district would retain ownership of the roadways in question.

The Court expressed concern that public access to the roads would be limited:
"[T]he fact that public access to the roads will be limited raises a question of whether the stated public purposes are only incidental to a primary private purpose . . . ." [14] The fact that the district retained ownership of the roadways in question, coupled with the legislative declaration of a public purpose, "leads us to the conclusion that the on-site road improvements serve a public purpose." [15] The Court stated, however, that "[a] broad, general public purpose . . . will not constitutionally sustain a project that in terms of direct, actual use, is purely a private enterprise." [16]

The district’s purchase of boat ramps and restriction of their use to only those members of the public owning lots within the district could raise concerns similar to those highlighted by the Court in Northern Palm Beach County Water Control District, i.e., citing a broad general public purpose of maintaining the dams and lakes may not constitutionally sustain the use of the ramps by only those members of the public who own lots within the district. Such a limited use only by the lot owners would have the appearance of providing a privilege to specific private individuals to the exclusion of the general public. [17] The incidental use of the boat ramps by the general public, however, would not raise similar concerns, since there would be no specific private individuals who would benefit from the expenditure of public funds.

Accordingly, it is my opinion that the district is authorized to purchase property and expend district funds for capital projects to fulfill the purposes of the district, *i.e.*, the maintenance of lakes and dams within the district and incidentally provide access to such property to the general public.

Sincerely,

Pam Bondi
Attorney General

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[1] Section 1, Ch. 86-392, Laws of Fla. (1986).

[2] Section 2(1), Ch. 86-392, Laws of Fla. (1986).

[3] Section 2(4), Ch. 86-392, Laws of Fla. (1986).

[4] *See Halifax Drainage District of Volusia County v. State*, 185 So. 123, 129 (Fla. 1938); Ops. Att'y Gen. Fla. 96-90 (1996) and 89-42 (1989).

[5] *See Halifax Drainage District* at 129; *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); *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493 (Fla. 1973). *And see*, e.g., Ops. Att'y Gen. Fla. 02-30 (2002) and 04-48 (2004).

[6] *See, e.g., Gardinier, Inc. v. Florida Department of Pollution Control*, 300 So. 2d 75, 76 (Fla. 1st DCA 1974); *Williams v. Florida Real Estate Commission*, 232 So. 2d 239, 240 (Fla. 4th DCA 1970).

[7] You state that the district and its contractors use the boat ramps to access the lakes to perform certain functions, such as, aquatic weed control, dam and water control structure inspection and maintenance, and water quality testing.

[8] *See, e.g.*, Ops. Att'y Gen. Fla. 86-35 (1986) and 90-74 (1990).

[9] While the question of whether the district may acquire the boat ramps and prohibit their use by any members of the public has not been raised, such a prohibition would not alter the conclusion that the district may obtain the subject property upon an appropriate determination that such action fulfills a district purpose.

[10] *Bannon v. Port of Palm Beach District*, 246 So. 2d 737, 741 (Fla. 1971).

[11] *See, e.g., State v. Housing Finance Authority of Polk County*, 376 So. 2d 1158, 1160 (Fla. 1979). If the county's taxing power or pledge of credit is involved, the improvements must serve a paramount public purpose. *See Orange County Industrial Development Authority v. State*, 427 So. 2d 174 (Fla. 1983). If, however, neither the taxing power nor a pledge of credit is involved, then it is enough to show only that a public purpose is involved. *Linscott v. Orange County Industrial Development Authority,* 443 So. 2d 97 (Fla. 1983).

[12] *And see Padgett v. Bay County*, 187 So. 2d 410 (Fla. 1st DCA 1966); *Collins v. Jackson County*, 156 So. 2d 24 (Fla. 1st DCA 1963); Op. Att'y Gen. Fla. 73-222 (1973) (expenditure of county funds to provide minor work or repair on private roads). *Cf. Brumby v. City of Clearwater*, 149 So. 203 (Fla. 1933), in which the Supreme Court of Florida voided a contract between a city and a private individual whereby the city financed the dredging of a channel leading to the private individual's place of business, because "the contract clearly required the appropriation of public money for the individual benefit of the appellant[.]"

[13] 604 So. 2d 440 (Fla. 1992).

[14] *Id.* at 443.

[15] *Id.*

[16] *Id.*, quoting, *Orange County Industrial Development Authority v. State*, 427 So. 2d 174, 179 (Fla. 1983).

[17] *Cf. City of Maitland v. Orlando Bassmasters Association of Orlando, Florida, Inc.*, 431 So. 2d 178 (Fla. 5th DCA 1983), in which the district court found no rational basis in a municipal ordinance which prohibited nonresidents of the city from obtaining parking permits for boat trailer spaces in a municipal lakefront park; rather, the only basis for the ordinance was the fact that residents desired an assured parking space near the municipal boat ramp. See also Op. Att'y Gen. Fla. 76-124 (1976) (while municipality may charge a fee for individual use of a municipally owned park or other municipal recreational facility which is reasonably related to the expense incurred in operating and maintaining the park or facility, the municipality may not charge a higher fee to nonresidents than residents unless all relevant economic factors establish a rational foundation for such differentiation).