

Municipalities, dredging canals as part of road program

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Subject:

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Mr. David La Croix
Cape Coral City Attorney
Post Office Box 150027
Cape Coral, Florida 33915-0027

RE: MUNICIPALITIES--FUEL TAX--TAXATION--DRAINAGE--TRANSPORTATION--use of tax revenues to clean canals for road and right-of-way drainage. s. 336.025, Fla. Stat.

Dear Mr. La Croix:

You ask substantially the following question:

May tax revenues collected pursuant to section 336.025(1)(a), Florida Statutes, be used to pay to dredge canals that are maintained as part of the city's road and right-of-way drainage program?

In sum:

Taxes collected pursuant to section 336.025(1)(a), Florida Statutes, may be used to pay for canal dredging within the city to the extent that such work is part of roadway and right-of-way drainage maintenance.

Section 336.025(1), Florida Statutes, authorizes a local option gas tax of 1-cent to 6-cents upon every gallon of motor fuel and special fuel sold in a county and taxed under the provisions of Part I or Part II of Chapter 206, Florida Statutes.[1] The statute limits county and municipal governments to using such revenues "only for transportation expenditures." [2] For purposes of the section, "transportation expenditures" is defined to mean expenditures by the local government for the following programs:

- "(a) Public transportation operations and maintenance.
- (b) Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment.
- (c) *Roadway and right-of-way drainage.*
- (d) Street lighting.
- (e) Traffic signs, traffic engineering, signalization, and pavement markings.
- (f) Bridge maintenance and operation.
- (g) Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads.[3] (e.s.)

In addition to the above-cited uses, counties that had a population of 50,000 or less on April 1, 1992, may use local option gas tax revenues to fund infrastructure projects that are consistent with the local government's approved comprehensive plan or, if the approval or denial of the plan has not become final, consistent with the last plan submitted to the state." [4]

Where a statute enumerates the things upon which it operates, it is ordinarily construed as excluding from its operation all things not expressly mentioned. [5] Thus, the list of expenditures allowed for local option gas tax revenues precludes use of such revenues for any other purpose.

You state that the City of Cape Coral has an extensive system of both freshwater and saltwater canals that serves as an integral part of the city's road and right-of-way drainage system. Determining whether maintenance of the canals is a valid transportation expenditure presents a mixed question of law and fact that may not be made by this office. The city, however, has determined that maintaining the canals is part of its road and right-of-way drainage program and that maintenance of the canals by removal of silt and other materials that may impede the flow of water is imperative to ensure proper road and right-of-way drainage.

Providing adequate road and right-of-way drainage in the form of canals or a retention pond would appear to be a basic requirement for an efficient drainage program and would have the appropriate nexus to be considered a valid transportation expenditure. [6] A determination that canal maintenance is necessary to ensure road and right-of-way drainage, however, would not authorize the use of tax revenues for other canal-related projects. [7]

Accordingly, it is my opinion that taxes collected pursuant to section 336.025, Florida Statutes, may be used for the maintenance of canals by dredging and removal of silt and other material that would impede the flow of water as a part of the city's road and right-of-way drainage program.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] Section 336.025(1)(a), Fla. Stat.

[2] Section 336.025(1)(a)2., Fla. Stat.

[3] Section 336.025(7), Fla. Stat.

[4] Section 336.025(8), Fla. Stat.

[5] See *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[6] *Cf.* Op. Att'y Gen. Fla. 97-25 (1997), in which it was concluded that the county could expend s. 336.025(1)(b), Fla. Stat., tax revenues for the operation and maintenance of a public transportation facility where the capital improvements element of the county's comprehensive plan identifies the need for such a facility.

[7] The materials provided indicate a determination that "silt and other materials deposited in the canals along with the stormwater be removed from time-to-time to prevent water quality degradation." Prevention of water pollution would not be a program included within "transportation expenditures" allowed under s. 336.025(1), Fla. Stat.