

Local option gas tax revenues

Number: AGO 94-20

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Subject:
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Mr. Albert C. Galloway, Jr.
Lake Wales City Attorney
Post Office Box 466
Lake Wales, Florida 33859-0466

RE: TAXATION--LOCAL OPTION GAS TAX--AIRPORTS--revenues from local option gas tax may not be used for repair and maintenance of municipal airport runways. s. 336.025(1), Fla. Stat. (1993).

Dear Mr. Galloway:

You ask on behalf of the Lake Wales City Commission substantially the following question:

May the city use local option gas tax revenues collected pursuant to section 336.025, Florida Statutes, to repair and maintain runways at the Lake Wales Airport?

In sum:

The repair and maintenance of airport runways is not an authorized use of local option gas tax revenues collected pursuant to section 336.025, Florida Statutes.

Section 336.025(1), Florida Statutes, authorizes a local option gas tax of one to six 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 the use of such tax revenues by county and municipal governments "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]

In addition to the above-cited uses, counties with 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 approval or denial of 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, a list of expenditures allowed for local option gas tax revenues, precludes use of such revenues for any other purpose.

While local option gas tax revenues may be used for "public transportation operations and maintenance," the term is not defined in the statute. Chapter 336, Florida Statutes, however, generally provides for a county road system as the responsibility of the county commission.[6] Furthermore, the enumerated uses of local option gas tax revenues all relate to roadways and appurtenant areas, structures and devices within the county road system. The "county road system" is defined as "all collector roads in the unincorporated areas of a county and all extensions of such collector roads into and through any incorporated areas, all local roads in the unincorporated areas, and all urban minor arterial roads not in the State Highway System." [7] Runways at a local airport do not fall within the definition of the county road system.[8]

I would note that the sale of aviation fuel is not subject to the local option gas tax under section 336.025(1), Florida Statutes.[9] While arguably, a public transportation system may include an airport, it would appear inconsistent to include runway repair and maintenance in the expenditures allowed for local option gas tax revenues when the aviation fuel used in the airplanes operated on the runways is excluded from the local option tax.

Accordingly, a municipality may not use local option gas tax revenues for the repair and maintenance of runways at the local airport, as such use is not within the enumerated purposes for which the revenues may be expended under section 336.025, Florida Statutes.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] Parts I and II, chapter 206, Florida Statutes (1993), authorize the taxation of the sale, use, distribution or consumption of motor fuel and special fuel (diesel fuel, alcohol, or liquid product, except kerosene, used to propel a diesel engine) in this state.

[2] See s. 336.025(1)(a)2., Fla. Stat. (1993).

[3] See s. 336.025(7), Fla. Stat. (1993).

[4] See, s. 336.025(8), Fla. Stat. (1993).

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

[6] See section 336.02, Florida Statutes (1993), providing that the county commissioners are invested with general superintendence and control of the county roads and structures within their respective counties.

[7] Section 334.03(8), Florida Statutes (1993), incorporated by section 336.01, Florida Statutes (1993), as the definition of "county road system" to be used in chapter 336, Florida Statutes (1993).

[8] See *Alsop v. Pierce*, 19 So. 2d 799, 803 (Fla. 1944) (meaning of words that are not technical in nature must be derived from the context of the material in which they are used).

[9] See sections 206.42(1) and 206.9825(1), Florida Statutes (1993), stating that aviation fuel shall not be subject to the taxes imposed by section 336.025, Florida Statutes (1993).