Soil & Water Conservation District

Number: INFORMAL

Date: June 16, 2017

June 15, 2017

Mr. Rick Dantzler
Victor Smith Law Group, P.A.
55 Fifth Street Northwest
Winter Haven, Florida 33881

Dear Mr. Dantzler:

On behalf of the Polk County Soil and Water Conservation District, you have asked the Attorney General whether the District may sponsor a nonprofit corporation organized for the purpose of owning and operating a water and wastewater utility. Attorney General Bondi has asked me to respond to your letter.

You state that the District has been asked whether it is interested in acquiring a privately owned water and sewer system located in Polk County. Rather than purchasing the utility, an independent nonprofit corporation would be created under Florida law to sell bonds to finance the purchase, with no liability on the part of the District, and the property would become the property of the District once the indebtedness is paid off.[1] The District would provide oversight for the corporation and receive a fee for the service, and when the utility becomes the property of the District, it could sell the utility and use the proceeds for District purposes. You ask whether this arrangement would be within the scope of a soil and water conservation district.

Special districts have only those powers expressly enumerated by statute, or necessarily implied to carry out a power conferred by the Legislature.[2] The powers granted to soil and water conservation districts are set forth in section 582.20, Florida Statutes. Although districts are authorized to acquire and administer property and to receive income from and sell such property, no provision authorizes a district to sponsor and provide oversight to a water and wastewater system.

In fact, the oversight of water and sewer systems is controlled by Chapter 153, Florida Statutes. Generally, Part I of Chapter 153 gives the power to purchase, construct, or improve water and sewer systems to counties. Part II gives counties the power to create water and sewer districts. Part III specifically addresses wastewater facility privatization contracts, finding as follows in section 153.90(2), Florida Statutes:

“The Legislature therefore determines that it is in the public interest of the state to supplement and enhance the authority of public entities to solicit, negotiate, and enter into contracts with private entities for the financing, designing, acquisition, ownership, leasing, construction, improvement, operation, maintenance, and administration, or any combination thereof, of wastewater facilities.”

Section 153.91(3), Florida Statutes, provides that the definition of “Public entity” as used above includes a special district when it is “authorized to provide wastewater service[.]” There is no authorization in Chapter 582, Florida Statutes, for soil and water conservation districts to “provide wastewater service,” and thus, no grant of power to a soil and water conservation district to enter into an agreement regarding the operation of a water and wastewater system.

I trust that the above informal comments may be of assistance to you in resolving this matter.

Sincerely,

Ellen B. Gwynn
Assistant Attorney General

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[1] You base this arrangement on Internal Revenue Service Revenue Ruling 63-20, which describes the elements necessary to enable tax-exempt financing of a nonprofit that is engaged in a public purpose on behalf of a state or political subdivision.
Rev. Rul. 63-20, 1963-1 C.B. 24.

[2] See Forbes Pioneer Boat Line v. Bd. of Commissioners of Evergreen Drainage Dist., 82 So. 346, 350 (Fla. 1919); Bd. of Commissioners of Jupiter Inlet Dist. v. Thibadeau, 956 So. 2d 529, 532 (Fla. 4th DCA 2007).