Contracts -- Assessments

Number: INFORMAL

Date: December 18, 2014

Mr. Richard E. Miller
President, Board of Supervisors
Sun ‘N Lake of Sebring Improvement District
5306 Sun ‘N Lake Boulevard
Sebring, Florida 33872

Dear Mr. Miller:

You have asked for assistance in determining whether section 189.052, Florida Statutes, supersedes the requirements of a contract between the Sun ‘N Lake of Sebring Improvement District (district) and a mobile home park regulated by Chapter 513, Florida Statutes. The 1996 agreement provides that assessments against the park will be on a per acre basis, while the statute, created in 2000, states that mobile home facilities shall be assessed in the same manner as a hotel, motel, or similar facility. There is concern that application of section 189.052, Florida Statutes, would be an unconstitutional impairment of a contract.

Both the United States and the Florida Constitution prohibit the passage of any law impairing the obligations of contracts.[1] The laws existing at the time and place of the contract form a part of it and the contract rights acquired therein may not be impaired by subsequent legislation in the absence of provisions in the contract reserving such powers.[2] The courts of this state have held that the constitutional prohibition against the impairment of contracts is applicable to municipalities and municipal contracts.[3] The constitutional prohibition is against the passage of any law impairing the obligations of contracts.

In Florida, it is clear that absent a clear expression of legislative intent to the contrary, a statute is presumed to operate prospectively.[4] As stated by the Supreme Court of Florida, "[t]his rule mandates that statutes that interfere with vested rights will not be given retroactive effect."[5]

Section 189.052, Florida Statutes, provides:

"When an independent or dependent special district levies an assessment on a facility regulated under chapter 513, the assessment shall not be based on the assertion that the facility is comprised of residential units. Instead, facilities regulated under chapter 513 shall be assessed in the same manner as a hotel, motel, or other similar facility."

Section 189.052, Florida Statutes, was created in 2000,6 after the signing of the 1996 contract between the district and mobile home park (regulated by Chapter 513, Florida Statutes). There is no language in the statute which speaks to its retroactive application, nor could this office find that the statute could be applied to the contract in question. Section 189.03(2)(b), Florida Statutes, however, sets forth the policy of this state "[t]hat the exercise by any independent special district of its powers complies with all applicable laws, rules, and regulations." While this

office does not construe the terms of contracts, paragraph 16 of the contract provides for its amendment "only by an instrument in writing signed by the parties hereto or their successors or assigns." Any future amendments to the assessments in the contract, therefore, would have to comply with section 189.052, Florida Statutes.

I trust that these informal comments will be of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See* s. 10, Art. I, U. S. Const., *and* s. 10, Art. I, Fla. Const.

[2] *See Yamaha Parts Distributions, Inc. v. Ehrman*, 316 So. 2d 557 (Fla. 1975), in which the Florida Supreme Court refused to apply to a franchise agreement legislation subsequently enacted.

[3] *See, e.g., Anders v. Nicholson*, 150 So. 639 (Fla. 1933) (constitutional prohibition against laws impairing obligations of contract applies to contracts with state and municipalities as well as contracts between individuals) and *City of Miami v. Bus Benches Co.*, 174 So. 2d 49 (Fla. 3d DCA 1965) (party to contract with municipality entitled to constitutional protection against impairment of it if municipality attempts to unilaterally change its obligations under valid agreement); *see also Broughton v. Pensacola*, 93 U. S. 266 (1876) (inhibition of Constitution which preserves the sacredness of contracts against the state's interference applies to liabilities of municipal corporations created by its permission).

[4] *See, e.g., Young v. Altenhaus*, 472 So. 2d 1152 (Fla. 1985) (in absence of explicit legislative expression to the contrary, a substantive law is to be construed as having prospective effect only); *VanBibber v. Hartford Accident & Indemnity Insurance Co.*, 439 So. 2d 880 (Fla. 1983)*; State v. Lavazzoli*, 434 So. 2d 321 (Fla. 1983).

[5] 472 So. 2d at 1154. *See also* Op. Att'y Gen. Fla. 88-55 (amendment to consultants' competitive negotiation act does not apply retroactively to continuing contracts entered into prior to amendment).

[6] *See* s. 9, Ch. 2000-355, Laws of Fla.