Taxation - Immunity - Counties

Number: INFORMAL

Date: August 20, 2014

The Honorable Bob Henriquez
Hillsborough County Property Appraiser
County Center, 16th Floor
601 East Kennedy Boulevard
Tampa, Florida 33602-4932

Attn: Mr. William D. Shepherd, General Counsel

Dear Mr. Henriquez:

You ask for this office's assistance in determining whether county-owned property located outside that county's jurisdictional boundaries is immune from taxation by the county in which the property is located.[1]

It is well-settled that property owned by a county is immune from taxation.[2] Florida follows the general rule that the state is immune from taxation and that taxes may not be imposed upon its agencies or instrumentalities unless they are specifically made subject to taxation.[3] Counties, whether charter or not, are political subdivisions of the state and are also immune from taxation.[4] The state's and counties' immunity from taxation, however, is not derived from statute or the constitution, but "rests upon broad grounds of fundamentals in government."[5]

The Supreme Court of Florida in *Dickinson v. City of Tallahassee*[6] has previously addressed whether property owned by the state or a county could be taxed by a municipality pursuant to section 166.231, Florida Statutes. The Court noted that the crux of the case was whether the state had waived its immunity from taxation by either the State Constitution or the taxing statutes. While Article VII, section 9(a), Florida Constitution, authorizes municipalities to impose ad valorem taxes, the court found no evidence that it was meant to allow taxation of the sovereign or that the power to tax by implication was intended to be a release of the sovereign's immunity from taxation.[7] Absent a clear waiver of immunity, the court concluded that county property, even though leased to private, for-profit businesses, was not subject to ad valorem taxation.[8]

Accordingly, absent a clear constitutional provision affecting the immunity of county property from taxation, property owned by a county situated in another county is immune from taxation.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Your question arises due to Pinellas County's ownership of real property located in Hillsborough County. Mr. Joseph A. Morrissey, Pinellas County Assistant County Attorney, has reviewed this matter and agrees with your conclusion that county-owned property is immune from taxation.

[2] *Canaveral Port Authority v. Department of Revenue*, 690 So. 2d 1226 (Fla. 1996).

[3] *See, e.g., Park-N-Shop, Inc. v. Sparkman*, 99 So. 2d 571, 573-574 (Fla. 1957) (property of the state and of a county is immune from taxation despite references to such property in statutes as being exempt). *See also First Union National Bank of Florida v. Ford*, 636 So. 2d 523 (Fla. 5th DCA 1993) (counties, as parts of state, are immune from state, municipal, or other special districts' attempts at taxation).

[4] *See Markham v. Broward County*, 825 So. 2d 472, 474 (Fla. 4th DCA 2002), citing *Canaveral Port Authority v. Department of Revenue*, 690 So. 2d 1226 (Fla. 1996) and Article VIII, s. 1, Fla. Const.

[5] *State ex rel. Charlotte County v. Alford*, 107 So. 2d 27, 29 (Fla. 1958) (although statutes specifically exempt state owned lands, such exemption is not dependent upon statutory or constitutional provisions, but rests upon broad grounds of fundamentals in government).

[6] 325 So. 2d 1 (Fla. 1975).

[7] *Id.* at 3.

[8] *Cf.* Op. Att'y Gen. Fla. 06-05 (2006) (county may not alter immunity of county property from taxation absent clear constitutional waiver of such immunity even though county property is leased or used by a private entity).