Counties -- Independent Special Districts -- Pensions

Number: INFORMAL

Date: October 25, 2013

Mr. Terrell K. Arline
Bay County Attorney
840 West 11th Street
Panama City, Florida 32401

Mr. Robert C. Jackson
Bay Medical Center Attorney
Postal Drawer 1579
Panama City, Florida 32402

Dear Messrs. Arline and Jackson:

On behalf of the Board of County Commissioners of Bay County and the Board of Trustees of the Bay Medical Center (BMC), you ask substantially whether Bay County ultimately will be responsible for the pension plan liability of the independent special district Bay Medical Center should the district be dissolved. This office has been advised that there are no imminent plans to seek dissolution of the BMC district. In order to be of assistance, however, the following general comments are offered.

BMC is recognized as an independent special district[1] with a comprehensive special act charter.[2] You indicate that effective March 31, 2012, the trustees for BMC transferred all assets to Bay County Health Systems, LLC, LHP Hospital Group, Inc., and Sacred Heart Health System. The trustees paid off outstanding bonds and retired other debt of the district, retaining more than $30 million from the transaction. You also relate that the district had participated in the Florida Retirement System until January 1, 1996, when the trustees opted out of the Florida Retirement System and established their own retirement system, meeting all applicable state and federal requirements. The retirement plan, however, was not transferred as a part of the aforementioned sale and remains an obligation of the district. The BMC trustees continue to administer the plan, which has been closed to new members since March 31, 2012. With assets of $84.8 million and actuarial accrued liabilities of more than $100 million, you state that there remains an unfunded actuarial accrued liability of $15.4 million.

Section 14, Article X of the Florida Constitution, requires that any increase in benefits made after January 1, 1977, to members or beneficiaries of a governmentally sponsored pension fund must be funded on a "sound actuarial basis." This has been interpreted to mean that a retirement program must be funded in such a manner that the retirement fund is able to meet its continuing obligations as they mature.[3]

Part VII, Chapter 112, Florida Statutes, creates the "Florida Protection of Public Employee Retirement Benefits Act," which establishes minimum standards for the operation and funding of public employee retirement systems and plans.[4] In directing the manner in which retirement

funds are to be administered, section 112.64, Florida Statutes, in pertinent part, requires:

"(2) From and after October 1, 1980, for those plans in existence on October 1, 1980, the total contributions to the retirement system or plan shall be sufficient to meet the normal cost of the retirement system or plan and to amortize the unfunded liability, if any, within 40 years; however, nothing contained in this subsection permits any retirement system or plan to amortize its unfunded liabilities over a period longer than that which remains under its current amortization schedule.
(3) For a retirement system or plan which comes into existence after October 1, 1980, the unfunded liability, if any, shall be amortized within 40 years of the first plan year.
(4) The net increase, if any, in unfunded liability under the plan arising from significant plan amendments adopted, changes in actuarial assumptions, changes in funding methods, or actuarial gains or losses shall be amortized within 30 plan years."

Section 112.66, Florida Statutes, in enumerating general provisions for governmental retirement plans, states:

"(8) The assets and liabilities of a retirement system or plan shall remain under the ultimate control of the governmental unit responsible for the retirement system or plan, unless an irrevocable trust has been or is established for the purpose of managing and controlling the retirement system or plan, in which case the board of trustees shall have ultimate control over the assets and liabilities of the retirement system or plan. Nothing herein shall absolve the governmental unit from being ultimately responsible for the payment of its contribution to a retirement system or plan nor remove from the governmental unit the ultimate authority to adjust benefits consistent with the Florida Statutes and the retirement system or plan; however, nothing contained herein shall be construed to permit the creation of such irrevocable trust except by special act of the Legislature.
(9) The instrument or instruments, ordinance, or statute under which a retirement system or plan operates shall provide that all assets of such retirement system or plan shall be held in trust by the board of trustees or, when an irrevocable trust does not exist, by the governmental entity."

Thus, the Legislature has expressed that assets and liabilities of a retirement system remain under the ultimate control of the governmental unit responsible for the retirement system, unless, by special act of the Legislature, an irrevocable trust has been created to manage and control the system. Where the Legislature has directed the manner in which something is to be done, such direction acts as a prohibition against its being done in any other manner.[5]

Section 8 of the district's enabling legislation,[6] however, states that the board of county commissioners and the board of trustees of the district may act jointly to dispose of all of the assets of the district, when it is determined by a majority vote of the commissioners and a two-thirds vote of the trustees that such disposition is in the best interest of the continued delivery of health care services to the citizens of Bay County, reasonably ensures continued delivery of services regardless of a patient's ability to pay, and maintains the same level of indigent health care offered by the district. The legislation also states:

"Following any such grant, gift, sale, conveyance, lease, or other disposition, and after paying or making provision for the payment of all liabilities of the board of trustees, the board of county

commissioners and the board of trustees, jointly, are hereby authorized, by a majority vote of the former and a two-thirds vote of the latter, to dissolve the board of trustees, in which event any other assets of the board of trustees shall be distributed to the board of county commissioners."[7] (e.s.)

Thus, the enabling legislation for the BMC district contemplates that dissolution of the district requires provision for the payment of all liabilities of the board of trustees following the sale or disposition of the district's property and that any remaining assets be distributed to the board of county commissioners. There is no apparent provision for the assumption of the district's liabilities in the current legislation.

Chapter 189, Florida Statutes, the "Uniform Special District Accountability Act of 1989,"[8] however, sets forth provisions for the definition, creation, and operation of special districts. Section 189.402(5), Florida Statutes, provides:

"It is the legislative intent and purpose, based upon, and consistent with, its findings of fact and declarations of policy, to authorize a uniform procedure by general law to create an independent special district as an alternative method to manage and finance basic capital infrastructure, facilities, and services. It is further the legislative intent and purpose to provide by general law for the uniform operation, exercise of power, and procedure for termination of any such independent special district." (e.s.)

The act further states that "[a]ll special districts, regardless of the existence of other, more specific provisions of applicable law, shall comply with the creation, dissolution, and reporting requirements set forth in this chapter."[9] (e.s.) It would appear, therefore, regardless of the more specific provisions in Chapter 2005-343, Laws of Florida, addressing the dissolution of the BMC Board of Trustees, the procedures in Chapter 189, Florida Statutes, would control.[10]

Chapter 189, Florida Statues, also states that in order for the Legislature to dissolve an active independent special district operating pursuant to a special act (such as BMC), the special act dissolving the district must be approved by a majority of the resident electors of the district.[11] Of relevance to the question you have raised, section 189.4045(2), Florida Statutes, provides:

"Unless otherwise provided by law or ordinance,[12] the dissolution of a special district government shall transfer the title to all property owned by the preexisting special district government to the local general-purpose government, which shall also assume all indebtedness of the preexisting special district. (e.s.)

It would appear, therefore, that absent a law directing another manner in which to dissolve a special district, dispose of its assets, and transfer its liabilities, a special district's assets are transferred to the local general-purpose government which will also assume all of the district's indebtedness. While the special legislation passed in 2005 directs a manner for the dissolution of the BMC board of trustees and disposal of its assets, there is no provision for the assumption of any remaining liabilities, nor is there recognition of the requirement of a referendum approving the special act dissolving the district.

In light of the fact that there is no indication of imminent plans to dissolve the BMC special

district, should such a situation arise, the transfer of remaining liabilities would most appropriately be addressed in the special act dissolving the district.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See* Ch. 95-510, Laws of Fla.

[2] *See* Ch. 2005-343, Laws of Fla., codifying all previously adopted special acts relating to Bay Medical Center.

[3] *See Florida Ass'n of Counties, Inc. v. Department of Administration, Division of Retirement*, 595 So. 2d 42 (Fla. 1992).

[4] Section 112.61, Fla. Stat. *See also* s. 112.62, Fla. Stat., stating that the provisions of the act are applicable to any and all units of state, county, special district, and municipal governments participating in, operating, or administering a retirement system or plan for public employees, funded in whole or in part by public funds.

[5] *See Alsop v. Pierce*, 19 So. 2d 799, 805-806 (Fla. 1944); *Dobbs v. Sea Isle Hotel*, 56 So. 2d 341, 342 (Fla. 1952); *Thayer v. State*, 335 So. 2d 815, 817 (Fla. 1976).

[6] Chapter 2005-343, Laws of Fla.

[7] Section 8, Ch. 2005-343, Laws of Fla., further notes that should the County Commission be unable to accept the remaining assets of the district, a court of competent jurisdiction shall order the disposition to a nonprofit charitable, scientific, or educational organization best suited to carry out the purposes of the act.

[8] Section 189.401, Fla. Stat.

[9] Section 189.4031(1), Fla. Stat.

[10] Section 189.4042(3), Fla. Stat., addresses the voluntary dissolution of an independent special district:

"If the governing board of an independent special district created and operating pursuant to a special act elects, by a majority vote plus one, to dissolve the district, the voluntary dissolution of an independent special district created and operating pursuant to a special act may be effectuated only by the Legislature unless otherwise provided by general law."

[11] *See* s. 189.4042(3)(b)1., Fla. Stat., also providing that for districts in which a majority of the

governing board is elected by landowners, a majority of the landowners must vote in the same manner by which the governing board is elected to approve the dissolution.

[12] It would appear that reference to an "ordinance" relates to s. 189.4042(2)(a), Fla. Stat., which states that the merger or dissolution of a dependent special district "may be effectuated by an ordinance of the general-purpose local governmental entity wherein the geographical area of the district or districts is located. However, a county may not dissolve a special district that is dependent to a municipality or vice versa, or a dependent district created by special act." A dependent special district created by special act may be merged or dissolved only by special act. *See* s. 189.4042(2)(b), Fla. Stat.