Community development district, public purpose

Number: INFORMAL

Date: July 05, 2012

Ms. Janet Y. Tutt
District Manager
Villages Center Community
Development District
3201 Wedgewood Lane
The Villages, Florida 32162

Dear Ms. Tutt:

You ask whether a community development district created pursuant to Chapter 190, Florida Statutes, serves a public purpose and is controlled by the state.

This office previously advised you that a community development district created pursuant to Chapter 190, Florida Statutes, is generally considered under state law to constitute a political subdivision of the state and has been considered by this office to be a local unit of special-purpose government.[1] You ask whether such districts serve a public purpose and are controlled by the state.

The Florida Legislature, in authorizing the creation of community development districts, has expressed the public need for such districts, stating:

"(a) There is a need for uniform, focused, and fair procedures in state law to provide a reasonable alternative for the establishment, power, operation, and duration of independent districts to manage and finance basic community development services; and that, based upon a proper and fair determination of applicable facts, an independent district can constitute a timely, efficient, effective, responsive, and economic way to deliver these basic services, thereby providing a solution to the state's planning, management, and financing needs for delivery of capital infrastructure in order to service projected growth without overburdening other governments and their taxpayers.

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It is in the *public interest* that long-range planning, management, and financing and long-term maintenance, upkeep, and operation of basic services for community development districts be under one coordinated entity."[2] (e.s.)

By authorizing the creation of such districts as a special district, the Legislature has recognized that a governmental or public purpose will be served.[3] I note that Chapter 190, Florida Statutes, subject to the conditions specified therein, authorizes community development districts to impose taxes.[4] The Legislature has provided an exemption from ad valorem taxes for the property of special districts, such as a community development district, when such property is

used for a public purpose.[5] Article VII, section 1, Florida Constitution, impliedly limits the imposition of taxes and the expenditures of tax revenues to public purposes.[6] Moreover, Article VII, section 10, Florida Constitution, prohibits the state or any special district from giving or using its taxing power to aid any private interest or individual.

Clearly then, the Legislature, with the enactment of Chapter 190, Florida Statutes, has made the legislative determination that such districts, in carrying out the responsibilities prescribed in that act, are serving a public purpose. In *Zedeck v. Indian Trace Community Development District*,[7] the Florida Supreme Court rejected arguments that the primary purpose of the community development district's bond issue was to benefit private property, stating:

"The expansion of water and sewer systems contemplated by the [community development district] and the bond issue for implementing that expansion are within the purposes of chapter 190 and within the powers given community development districts to implement those purposes. §§190.002, 190.011, 190.012, 190.016. A legislative declaration of public purpose is presumed valid and should be considered correct unless patently erroneous. *State v. Housing Finance Authority of Polk County*, 376 So.2d 1158 (Fla.1979). Even though the system expansion affects primarily land owned by Arvida, the public interest in this project is present and sufficiently strong to overcome Zedeck's claim."

Moreover, while established as an independent special district, the powers of a community development district are measured by the terms of the act under which it is organized and it can exercise no authority that has not clearly been granted to it by the Legislature or which is necessarily implied from the powers conferred.[8] Thus, it is the Legislature, through the enactment of Chapter 190, Florida Statutes, and such other statutes as may be applicable to such districts, that has prescribed the duties and responsibilities of community development districts.[9]

I trust the above informal comments may be of assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh

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[1] *See* Inf. Op. to Janet Tutt, dated June 28, 2012. The opinion further noted that Ch. 190, Fla. Stat., does not prevent the establishment of a community development district merely because there is only one landowner, nor does the chapter prevent the creation of such districts when there are no qualified electors as that term is defined in s. 190.003(17), Fla. Stat., although without qualified electors, a community development district may not levy ad valorem taxes.

[2] Section 190.002(1), Fla. Stat.

[3] *See* s. 190.003(6), Fla. Stat., defining a "Community development district" as "a local unit of

special-purpose government." *And see* s. 189.403(1), Fla. Stat., defining "Special district" to mean "a local unit of special purpose, as opposed to general-purpose, government within a limited boundary . . . ."

[4] *See* ss. 190.021 and 190.006(3)(a)1., Fla. Stat. *Cf.* Art. VII, s. 9, Fla. Const., entitled "Local taxes," providing, *inter alia*, that special districts may be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes.

[5] *See* s. 189.403(1), Fla. Stat., defining "Special district" and providing that "[f]or the purpose of s. 196.199(1), special districts shall be treated as municipalities" and s. 196.199(1), Fla. Stat., creating statutory exemption for property of "municipalities of this state or of entities created by general or special law . . . which is used for governmental, municipal, or public purposes").

[6] *See Board of Commissioners of Escambia County v. Board of Pilot Commissioners of Port of Pensacola*, 42 So. 697 (Fla. 1906); *Brown v. Winton*, 197 So. 543 (Fla. 1940).

[7] 428 So. 2d 647, 648 (Fla. 1983).

[8] *See* Op. Att'y Gen. Fla. 08-02 (2008). *Cf. Forbes Pioneer Boat Line v. Board of Commissioners of Everglades Drainage District*, 82 So. 2d 346 (Fla. 1919); Ops. Att'y Gen. Fla. 80-55 (1980), 83-44 (1983), and 74-169 (1974), recognizing that special districts possess only such powers as have been expressly granted by law or necessarily implied therefrom.

[9] *See generally* Ops. Att'y Gen. Fla. 08-02 (2008) (use of community development district funds), 07-05 (2007) (authority of special district to levy special assessment on property outside district boundaries), 96-66 (1996) (authority of community development district to enter into contract for cable television service to residents of district), and 83-44 (1983).