Political subdivisions, community development district

Number: INFORMAL

Date: June 29, 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 with no qualified electors and with all or a majority of its landowner votes controlled by one entity is a division of the State of Florida.

The Villages Center Community Development District (Center District) was created in 1992 by city ordinance pursuant to Chapter 190, Florida Statutes.[1] Your inquiry is prompted by an examination by the Internal Revenue Service (IRS) into the tax exempt status of bonds issued by the Center District. From the information provided by your staff, it appears that a division of the IRS has asserted that based upon IRS regulations, the Center District was not a political subdivision during the period of November 29, 1993, through June 1, 2004, as it did not qualify as a division of the state or a local government unit and did not possess sufficient sovereign powers as identified by previous IRS rulings and general council memoranda.[2] You state that the Center District has challenged this assertion and the issue is now being considered by the IRS Chief Counsel.

The determination as to whether the Center District qualifies as a political subdivision of the State of Florida for purposes of federal law and IRS regulations and rulings is an issue that this office must decline to address. Such a determination should, more appropriately, be addressed by the IRS which is currently considering this issue. Under state law, however, a community development district is generally considered to constitute a political subdivision of the state. Section 1.01(8), Florida Statutes, provides that in construing the Florida Statutes, where the context will permit, the words "public body," "body politic," or "political subdivision" include "counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and *all other districts in this state.*"[3] (e.s.) The Center District is listed in the Official List of Special Districts maintained by the Department of Economic Opportunity.[4] Special districts are recognized in Article VII, Florida Constitution as governmental entities[5] and this office has stated that a community development district is a local unit of special-purpose government created pursuant to Chapter 190, Florida Statutes.[6] The need for such districts is set forth in the statement of legislative findings, policies, and intent set forth in section 190.002, Florida Statutes, which provides in part:

"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."[7]

Chapter 190, Florida Statutes, does not prevent the establishment of a community development district merely because there is only one landowner and, as you note, in the past such districts have been created with a single landowner. Nor does the chapter prevent the creation of such districts when there are no qualified electors as that term is defined in section 190.003(17), Florida Statutes,[8] although without qualified electors, a community development district may not levy ad valorem taxes.[9]

As noted *supra,* however, the determination as to whether the Villages Center Community Development District qualifies as a political subdivision of the State of Florida for purposes of federal law and IRS regulations and rulings is one that must be addressed by the IRS rather than by this office.

Thank you for contacting the Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tsh

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[1] Chapter 190, Fla. Stat., is entitled the "Uniform Community Development District Act of 1980."

[2] Request for Technical Advice TEB Group 7226 Village Center Community Development District.

[3] *But see Canaveral Port Authority v. Department of Revenue*, 690 So. 2d 1226 (Fla. 1996), in which the Florida Supreme Court rejected the lower court's recognition of the Sarasota-Manatee Airport Authority as a "political subdivision" for purposes of immunity from taxation, stating that the Florida Constitution did not empower the Legislature to designate what entities are immune from ad valorem taxation. The following year, the Legislature enacted Ch. 97-255, Laws of Fla., which revised the definition of "Special District" in s. 189.403(1), Fla. Stat., to clarify that special districts are to be treated like municipalities for purposes of *exempting* district owned property from taxation.

[4] *See* s. 189.4035, Fla. Stat. An alphabetized list of special districts is available online at: http://dca.deo.myflorida.com/fhcd/sdip/OfficialListdeo/alphalist.cfm.

[5] *See, e.g.,* Art. VII, s. 9, Fla. Const., entitled "Local taxes" and 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; Art. VII, s. 10, Fla. Const. (Pledging credit); and Art. VII, s. 12, Fla. Const. (Local bonds). *And see North Port Road and Drainage District v. West Villages Improvement District*, 82 So. 3d 69 (Fla. 2012).

[6] See Op. Att'y Gen. Fla. 08-02 (2008).

[7] Section 190.002(1)(a), Fla. Stat.

[8] *But see* Op. Att'y Gen. Fla. 09-41 (2009), stating that Ch. 190, Fla. Stat., contemplates that the election of board members will transition from the landowners to the qualified electors of the community development district. *See* s. 190.006(3)(a)2., Fla. Stat.

[9] *See* s. 190.006(3)(a)1., Fla. Stat.