Counties, forgiveness on special assessment penalties

Number: INFORMAL

Date: November 17, 2011

Ms. Alison Rogers
Escambia County Attorney
221 Palafox Place, Suite 430
Pensacola, Florida 32502

Dear Ms. Rogers:

On behalf of the Escambia County Board of County Commissioners, you ask whether the commission has the authority to forgive or waive penalties and interest on delinquent special assessments imposed on Santa Rosa Island property pursuant to a county code provision. If not, you question whether the commission may amend its ordinances to do so.

Initially, after reviewing the information you have forwarded, it does not appear that this is a matter upon which this office may formally comment. The Attorney General is statutorily limited to rendering legal opinions on questions of state law.[1] Questions requiring the interpretation or construction of local legislation, as you have asked, should be resolved by the attorneys for local governments who have expertise in such matters. However, while this office does not generally interpret local legislation, I offer the following informal comments in an effort to be of assistance to you.

You state that Escambia County, as a non-charter county, has imposed special assessments on leasehold property located on Santa Rosa Island pursuant to the county's code of ordinances. Santa Rosa Island is a barrier island conveyed to Escambia County by the United States Government, with a restriction that the property not be conveyed to anyone in fee simple other than a state agency. The county, therefore, has leased the property for residential and commercial uses. The Santa Rosa Island Authority, a board appointed by the Escambia County Commission, was created by the Florida Legislature as a dependent special district to oversee the management of the island and the leases.[2]

The information you have provided indicates that special assessments have been imposed by the county pursuant to the county's code of ordinances and are collected under the code's provisions, not by the uniform method prescribed in section 197.3632, Florida Statutes. County ordinance creates a municipal services benefit unit for portions of Santa Rosa Island in which the county has a proprietary interest and imposes an annual assessment for the cost of services provided to leaseholds on the island.[3] You state that rate resolutions enacted by Escambia County establish a penalty of 18% per year, calculated monthly, for delinquent payments of special assessments. At times, leaseholders have requested forgiveness or waiver of interest penalties accruing on delinquent special assessments, but the county commission is unclear of its authority to grant such requests.

It is well settled that counties, like other units of local government, have no inherent power to

impose taxes, such that any taxing power for counties must be derived from the state.[4] Likewise, the authority to create exemptions from taxation or to otherwise affect the immunity of property from taxation must emanate from the organic law of the state.[5] In this instance, however, you are questioning the ability of a county to forgive interest penalties accruing on delinquent special assessments which have been imposed by ordinance and the collection of which is governed by ordinance. The courts have recognized that the imposition of a special assessment is a valid exercise of home rule power and is not an exercise of taxing power.[6]

Generally, when a legislative body has the power to create by ordinance, it has, by implication, the power to amend, modify, or repeal by ordinance.[7] Case law has recognized that counties are authorized by section 125.01(1), Florida Statutes, to levy special assessments to fund certain services provided through a municipal services taxing unit or a municipal services benefit unit.[8] Moreover, counties choosing to collect special assessments other than by the uniform collection procedures in section 197.3632, Florida Statues, are not bound by the restrictions of that section.[9]

I am aware of Attorney General Opinion 90-52, in which this office concluded that a municipality was not authorized to waive interest accumulated on unpaid special assessments imposed pursuant to Chapter 170, Florida Statutes. Unlike the instant situation, the special assessment was imposed under a statute which mandated that an interest penalty be added to amounts due and there was no provision for waiver or forgiveness of the penalty in the statute. In Attorney General Opinion 2000-69, it was determined that a water control district had no authority to waive delinquent special assessments, where the statute governing the imposition of the assessment set forth specific instances, not present the questioned situation, in which assessments could be corrected. Moreover, water control districts, unlike counties and municipalities, possess no home rule powers.

As you have stated, Escambia County has imposed a special assessment and specified the manner in which it is to be collected by ordinance. As discussed above, where a legislative body has the power to create by ordinance, it has, by implication, the power to amend, modify, or repeal by ordinance. Absent a statutory prohibition or direction to the contrary, it would appear that Escambia County may amend its ordinance imposing the special assessment to alter the means of its collection.

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

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tsh

---

[1] See Department of Legal Affairs Statement Concerning Attorney General Opinions, available at www.myfloridalegal.com.

[2] Section 3, Ch. 24500, Laws of Fla. (1947).

[3] Section 46-206, Part IV, Escambia County Code of Ordinances.

[4] *See Contractors and Builders Association of Pinellas County v. City of Dunedin*, 329 So. 2d 314, 317 (Fla. 1976), *petition for cert. denied*, 444 U.S. 867 (1979); *Belcher Oil Company v. Dade County*, 271 So. 2d 118, 122 (Fla. 1972); and Op. Att'y Gen. Fla. 06-05 (2006); Inf. Op. to The Hon. Heather Fiorentino, dated October 1, 1999 (right to pass an ordinance includes the power to repeal or modify it, provided no right secured by the Florida Constitution is violated; general rule that a local ordinance cannot be amended or repealed by a mere resolution, but must be accomplished by passage of a new ordinance).

[5] *See* Op. Att'y Gen. Fla. 93-35 (1993), in which this office concluded that a municipality may not waive past due public service taxes in order to compromise and settle the amount owed, absent statutory authority.

[6] *See City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) (municipality may impose special assessment by home rule power); *Sarasota County v. Sarasota Church of Christ, Inc.*, 667 So. 2d 180 (Fla. 1995).

[7] *See* 12A Fla. Jur 2d *Counties and Municipal Corporations* s. 160, *citing Miami-Dade Water & Sewer Authority v. Metropolitan Dade County*, 503 So. 2d 1314 (Fla. 3d DCA, 1987).

[8] *See, e.g., Workman Enterprises, Inc. v. Hernando County*, 790 So. 2d 598 (fire rescue services); *Water Oak Management Corporation v. Lake County*, 673 So. 2d 135, 136 (solid waste disposal and fire protection services).

[9] *Cf.* Op. Att'y Gen. Fla. 02-41 (2002).