Special assessments, meaning of local improvement

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Ms. Heather J. Encinosa
Special Counsel to the City of Destin
1500 Mahan Drive, Suite 200
Tallahassee, Florida 32308

Dear Ms. Encinosa:

As special counsel to the City of Destin, you have asked this office for assistance in determining whether a city charter provision limiting the levy of special benefit assessments for local improvements applies to the enactment of an ordinance imposing a solid waste services assessment.[1] This office does not interpret the provisions of local codes and ordinances, thus no comment will be made on the specific provisions of the Destin Charter. A general discussion of what constitutes a special assessment and the appropriate improvements funded by such assessment will hopefully provide direction in the resolution of this matter.

While there has been confusion regarding the terms tax, special assessment, and service or user charges, the courts of this state and this office have provided direction in what constitutes each of the terms. Generally, a tax is a forced burden or charge assessed by a reasonable rule of apportionment on persons or property for the support of the government.[2] Special assessments, while not taxes,[3] are "charges publicly assessed against the property of some particular locality because that property derives some special benefit from the expenditure of the money collected by the assessment in addition to the general benefit accruing to all property or citizens."[4] Unlike a tax, special assessments are a special charge on land justified by the land deriving a special benefit in addition to the general benefit to the public.[5]

The courts of this state have recognized that special assessments may be imposed for the furnishing of garbage collection.[6] In *Charlotte County v. Fiske*,[7] the district court found that waste collection could be provided through special assessments, even though no capital improvements were involved.[8] Thus, where the provision of a service such as garbage collection is shown to bestow some special or peculiar benefit to the property above the benefits generally derived by all property or the public, special assessments may be imposed to fund such service.

Section 197.3632, Florida Statutes, allows local governments authorized to impose non-ad valorem assessments to use the uniform method of collecting such assessments in that section.[9] Non-ad valorem assessments are only "those assessments which are not based upon millage and which can become a lien against a homestead as permitted in s. 4, Art. X of the State Constitution."[10] Thus, in the instance where a fee is imposed upon property based upon the benefit to the assessed property and it becomes a lien against such property, it is a non-ad valorem special assessment which may be collected pursuant to section 197.3632, Florida Statutes.

As found in *Fiske*, the benefit to the assessed property need not be a capital improvement in order to be funded by a special assessment.[11] The court clearly found that construction of a public improvement is not necessary and that the "'improvement' involved may well be simply the furnishing of or making available a vital service, e.g., fire protection or . . . garbage disposal."[12] Thus, there appears to be no basis for limiting the interpretation of a "local improvement," where it is not defined otherwise, to those involving capital improvements.

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

Sincerely,

Lagran Saunders
Assistant Attorney General

ALS/tsrh

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[1] Section 1.01(i), Destin Charter, states: [T]he city shall have the following powers:

"(i)(1) To levy special benefit assessments for local improvements and to acquire a lien on real property for failure to pay the assessment for the improvements.
(2) No special assessment for local improvements shall be levied by the city against any private property unless the procedures to make such levy have been invoked by a petition submitted to the city council bearing the bona fide signatures of the majority of the owners of record, as of the date of such submission, of the property to be assessed."

[2] *See generally* 50 Fla. Jur. 2d *Taxation* s. 2.

[3] *See, e.g., Marshall v. C. S. Young Construction Co.*, 113 So. 565 (Fla. 1927); *Jackson v. City of Lake Worth*, 23 So. 2d 526 (Fla. 1945) (assessment for benefit, although not strictly a tax, is a burden levied under the power of taxation); *Atlantic Coast Line R. Co. v. City of Lakeland*, 115 So. 669 (Fla. 1927) (assessment for local improvement is part of system of taxation); *Anderson v. City of Ocala*, 91 So. 182 (Fla. 1922) (power exerted in imposing and collecting special assessments is the taxing power of the state).

[4] 48 Fla. Jur. 2d *Special Assessme*nts s. 1

[5] *Id.* at s. 2.

[6] *See Charlotte County v. Fiske*, 350 So. 2d 578 (Fla. 2d DCA 1977); *Gleason v. Dade County*, 174 So. 2d 466 (Fla. 3d DCA 1965) (pursuant to ordinance, special assessments for waste collection which became liens against the realty upheld). *Cf.* Op. Att'y Gen. Fla. 89-85 (1989), concluding that a flat fee collected by a county for garbage collection provided to those county residents choosing to use the service was not a special assessment, but was a charge for the services rendered, unrelated to any peculiar or special benefit received by the property and did not satisfy the requirements for a non-ad valorem assessment.

[7] 350 So.2d 578 (Fla. 2d DCA 1977).

[8] *Id.* at 580.

[9] Section 197.3632(3)(a), Fla. Stat.

[10] Section 197.3632(1)(d), Fla. Stat. Section 4, Art. X, Fla. Const., provides:

"(a) There shall be exempt from forced sale under process of any court, and no judgment, decree or execution shall be a lien thereon, except for the payment of taxes and *assessments* thereon, obligations contracted for the purchase, improvement or repair thereof, or obligations contracted for house, field or other labor performed on the realty, the following property owned by a natural person:
(1) a homestead . . .
(2) personal property to the value of one thousand dollars. . . ." (e.s.)

[11] *See also Madison County v. Foxx*, 636 So. 2d 39 (Fla. 1st DCA 1994) (special assessments are permitted, even when no capital improvements are involved).

[12] 350 So. 2d 578 at 580.