Taxability of property dedicated to public use

Number: INFORMAL

Date: December 13, 2006

Mr. W.C. "Bill" Sherman
Okeechobee County Property Appraiser
307 N.W. 5th Avenue, Suite A
Okeechobee, Florida 34972

Dear Mr. Sherman:

You have asked for assistance in determining whether property dedicated to a city for certain public purposes is taxable. Attorney General Crist has asked me to respond to your letter.

After reviewing the information you have submitted, it does not appear that this is a matter upon which this office may formally comment. A definitive answer to your question would require an analysis of factual matters over which this office has no authority. See section 16.01(3), Florida Statutes. Mixed questions of law and fact, such as the one you have posed, are judicial questions and must be resolved in an appropriate court proceeding.

However, in an effort to assist you, I offer the following general comments. As a general rule, and in the absence of express statutory authority, public property and land dedicated to public use are not subject to taxation. (84 C.J.S. Taxation s. 197) Land dedicated to public use is immune from taxation, but not where the use of the property dedicated is restricted to owners or residents in the locality of the property, or where the property, notwithstanding the servitude with which it is burdened, may still be alienated or encumbered by the owner. *Id*.

Section 196.199, Florida Statutes, provides exemptions from taxation for governmental property. As provided therein, "[a]ll property of the several political subdivisions and municipalities of this state or of entities created by general or special law and composed entirely of governmental agencies, or property conveyed to a non-profit corporation which would revert to the governmental agency, which is used for governmental, municipal, or public purposes shall be exempt from ad valorem taxation, except as otherwise provided by law." Subsection (2) of this statute provides that property owned by a governmental unit but used by a nongovernmental lessee shall only be exempt from taxation under the circumstances outlined in the subsection. Thus, susceptibility to taxation may depend upon the use made of governmental property.

Application of these general propositions to the facts of your situation may help you resolve the question of whether particular property is subject to taxation. You may wish to discuss this matter with your attorney, who can provide you with more detailed assistance in resolving your questions.

Thank you for contacting the Florida Attorney General's Office. I trust that these informal comments may be helpful to you.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tfl