Special assessments, solid waste collection

Number: INFORMAL

Date: December 14, 2006

Ms. Ann Carlyle
2690 64th Place North
St. Petersburg, Florida 33702-6344

Dear Ms. Carlyle:

The Florida Attorney General's Office has received your letter about the actions of the Pinellas County Board of County Commissioners in creating a municipal service benefit unit for solid waste collection and disposal and the imposition of special assessments to pay for such services. Attorney General Crist has asked me to respond to your letter in which you express your concern about the solid waste assessment being added to your tax bill.

It appears that the Pinellas County Commission created the Lealman Solid Waste Collection and Disposal District as a municipal service benefit unit pursuant to County Ordinance 05-89.1 Section 125.01(1)(q), Florida Statutes, authorizes the governing body of a county to:

"Establish, and subsequently merge or abolish those created hereunder, municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided fire protection; law enforcement; beach erosion control; recreation service and facilities; water; alternative water supplies . . .; streets; sidewalks; street lighting; *garbage and trash collection and disposal*; waste and sewage collection and disposal; drainage; transportation; indigent health care services; mental health care services; and other essential facilities and municipal services *from funds derived from* service charges, *special assessments*, or taxes within such unit only. . . ." (e.s.)

Thus, section 125.01, Florida Statutes, authorizes a county to impose special assessments to generate funds to provide garbage and trash collection within a municipal service taxing unit created for that purpose. The courts have also recognized that waste collection may be provided through special assessments.[2]

Section 197.3632, Florida Statutes, authorizes local governments imposing non-ad valorem assessments to use the uniform method of collecting such assessments in that section. Non-ad valorem assessments collected pursuant to this section are included in the combined notice for ad valorem taxes and non-ad valorem assessments provided for in s. 197.3635.[3]

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."[4] Special assessments are not based on millage but are enforced contributions by a property owner imposed on the basis that the assessed property derives some special or peculiar benefit in the enhancement of value as a result of the improvement or service funded by the proceeds from the assessment.[5]

Such an assessment can become a lien against such property.[6] Thus this office in Attorney General Opinion 90-39 recognized that a solid waste assessment imposed by county could qualify a "non-ad valorem assessment" which may be collected pursuant to s. 197.3632, Florida Statutes.

I am enclosing a copy of sections 125.01 and 197.3632, Florida Statutes, for your consideration. You will note that section 197.3632 imposes certain procedural requirements if the local governing body wishes to impose the non-ad valorem assessment under that section.

I trust that the above informal comments may be of some assistance to you in resolving this matter. Thank you for contacting the Florida Attorney General's Office.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tfl

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[1] Codified in the county code as ss. 114-351 to 114-360.

[2] *See, e.g., Charlotte County v. Fiske*, 350 So. 2d 578 (Fla. 2nd DCA 1977).

[3] Section 197.3632(7), Fla. Stat. *And see* s. 197.3632(8)(a), Fla. Stat., providing that the non-ad valorem assessments collected pursuant to this section are subject to all collection provisions of this chapter, including provisions relating to discount for early payment, prepayment by installment method, deferred payment, penalty for delinquent payment, and issuance and sale of tax certificates and tax deeds for nonpayment.

[4] Section 197.3632(1)(d), Fla. Stat.

[5] *See, City of Boca Raton v. State*, 595 So. 2d 25 (Fla. 1992) and *Sarasota County v. Sarasota Church of Christ, Inc.*, 667 So. 2d 180 (Fla. 1995).

[6] *See* Art. X, s. 4, Fla. Const., which 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.)