Municipal service benefit units, special assessments

Number: INFORMAL

Date: May 12, 1998

The Honorable George A. Crady
Representative, District 12
823 U.S. Highway 17
Yulee, Florida 32097

RE: MUNICIPAL SERVICE BENEFIT UNITS--SPECIAL ASSESSMENTS--levy of special assessments by MSBU. s. 125.01(1)(q), Fla. Stat.

Dear Representative Crady:

You have asked for my assistance in determining the validity of a special assessment levied by a municipal service benefit unit. In the absence of more specific information regarding the levy of this special assessment, my comments must be general in nature.

Section 125.01(1)(q), Florida Statutes, sets forth the powers of the governing body of a county and states that a county may provide "essential facilities and municipal services from funds derived from . . . special assessments, or taxes within such [municipal service taxing or benefit] unit only." Further, section 125.01(1)(r), Florida Statutes, authorizes a county to "[l]evy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments[.]"[1]

Taxes and special assessments are distinguishable in that, while both are mandatory, there is no requirement that taxes provide any specific benefit to the property; instead, they may be levied throughout the particular taxing unit for the general benefit of residents and property. Special assessments, on the other hand, must confer a specific benefit upon the land burdened by the assessment.[2]

Two requirements exist for the imposition of a valid special assessment. First, the property assessed must derive a special benefit from the service provided. Second, the assessment must be fairly and reasonably apportioned among the properties that receive the special benefit. Thus, a special assessment is distinguished from a tax because of its special benefit and fair apportionment.[3]

Although a special assessment is typically imposed for a specific purpose designed to benefit a specific area or class of property owners, this does not mean that the costs of services can never be levied throughout a community as a whole. Rather, the validity of a special assessment turns on the benefits received by the recipients of the services and the appropriate apportionment of the costs thereof. This is true regardless of whether the recipients of the benefits are spread throughout an entire community or are merely located in a limited, specified area within the community.[4]

There are a number of methodologies for apportioning costs of special assessments. Special assessments may be apportioned among benefitted properties in relation to the property values of the various tracts as determined by the latest available real property assessment roll prepared by the county tax appraiser. Front foot or square foot methodologies for apportioning costs are the more traditional methods for making assessments, but other methods are permissible.

Many elements enter into the question of determining and prorating benefits, including physical condition, nearness to or remoteness from residential and business districts, desirability for residential or commercial purposes, and other factors peculiar to the locality where the improved lands are located. As the Florida Supreme Court stated in *South Trail Fire Control District v. State:*

The manner of the assessment is immaterial and may vary within the district, as long as the amount of the assessment for each tract is not in excess of the proportional benefits as compared to other assessments on other tracts.[5]

Finally, I would note that the apportionment of benefits and the determination of the existence of special benefits are legislative functions, and if reasonable persons differ on these issues the findings of the local officials must be sustained.[6]

I trust that these informal comments may assist you in resolving your questions about the validity of special assessments.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

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[1] *And see* s. 200.071(3), Fla. Stat., stating that a county which provides services or facilities through a municipal service taxing unit may levy up to an additional 10 mills of ad valorem tax to pay for these services and facilities within the municipal service taxing unit.

[2] *Sarasota County v. Sarasota Church of Christ, Inc*., 667 So. 2d 180, 183 (Fla. 1995); *City of Boca Raton v. State*, 595 So. 2d 25, 29 (Fla. 1992); *City of Naples v. Moon*, 269 So. 2d 355 (Fla. 1972).

[3] *Sarasota County*, *id.*; *South Trail Fire Control District v. State,* 273 So. 2d 380 (Fla. 1973); *Atlantic Coast Line R. Co. v. City of Gainesville*, 91 So. 118 (Fla. 1922).

[4] *Sarasota County, supra; South Trail Fire Control District, id.*

[5] 273 So. 2d at 384 (Fla. 1973).

[6] *See Sarasota County, supra*; *City of Boca Raton, supra*; *Rosche v. City of Hollywood*, 55 So. 2d 909 (Fla. 1952).