

Concurrency requirements, public schools

Number: INFORMAL

Date: October 21, 1997

The Honorable William F. Andrews
Representative, District 87
777 East Atlantic Avenue, Suite 226
Delray Beach, Florida 33483

Dear Representative Andrews:

You ask whether the Local Government Comprehensive Planning and Land Development Act, Part II, Chapter 163, Florida Statutes, and section 235.193, Florida Statutes, allow school boards and local governments sufficient means to include school facilities as a part of the infrastructure necessary in local land use plans when development affects the capacity of existing schools. Further, you question whether local governments may require school boards to pay for infrastructure expenses incurred as a result of having to comply with local land use plans.

Previously, you questioned whether section 163.3177, Florida Statutes, would have to be amended in order to allow approval of an intergovernmental coordination agreement by two-thirds of the municipalities in a county when a county seeks to extend concurrency requirements to public schools within the county. It was concluded that the applicable statute requires an agreement entered into by all of the municipalities in a county, as well as the school district and any unit of local government service providers in the county. Thus, in order to include school concurrency in an intergovernmental coordination agreement with the approval of less than all of the municipalities in a county, section 163.3177, Florida Statutes, would have to be amended. The opinion recognized, however, that the decision to amend the statute involved a question of policy for the Legislature.

Inherent in the March 6, 1997 letter from this office is the conclusion that existing laws do not automatically include schools in the concurrency requirements for development, but rather require an agreement among all the municipalities and the school district as described above. Thus, the framework does exist for making schools part of the elements to be in place in order for development to proceed.

The second issue you have raised relates to the responsibility of school districts to pay for infrastructure necessary for the development of school sites. You question whether school districts should be responsible for such expenses or whether local governments should be required to supply a site-ready location for school facilities. Ultimately, this is a policy issue that may be addressed legislatively.

This office has been contacted by Mr. David L. Powell, Chairman of the Public Schools Construction Study Commission, created by the Legislature for the purpose of studying and recommending appropriate reforms for the planning and siting of public schools. The commission will produce a final report by January 1, 1998, addressing the concerns you have

raised.

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

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk