

Municipal service benefit units, liability

Number: INFORMAL

Date: July 01, 1997

The Honorable Kelley R. Smith
Representative, District 21
222 North Third Street
Palatka, Florida 32177-3710

Dear Representative Smith:

You ask whether a municipal service benefit unit is similar to a homeowners association or condominium association. According to your letter, a constituent is concerned about the homeowners' personal liability should a municipal service benefit unit be created and a problem arise.

Section 125.01(1)(q), Florida Statutes (1996 Supplement), authorizes the board of county commissioners, as the governing and legislative body of a county, to establish municipal service taxing or benefit units (MSTU or MSBU) for any or all of the unincorporated areas of the county to provide certain essential facilities and municipal services.[1] Such services are to be funded by "service charges, special assessments, or taxes within such unit only." [2]

The board of county commissioners is the governing body of any MSTU or MSBU created pursuant to section 125.01(1)(q), Florida Statutes (1996 Supplement).[3] The board may levy ad valorem taxes without voter approval to provide such essential facilities and municipal services within the unit provided that the millage levied on any parcel of property for municipal purposes by all municipal service taxing units and the municipality does not exceed 10 mills.[4]

Unlike a homeowners' association or condominium association which is a private organization, an MSTU or MSBU is a governmental entity providing essential facilities and municipal services. Accordingly, any question of liability for actions taken by an MSTU or MSBU would be governed by the principles of law governing the liability of government agencies and officials.[5]

Since it is the county which is responsible for the creation of a MSTU or MSBU, your constituent may wish to discuss this matter further with the county attorney. I trust, however, that the above informal advisory comments may be of assistance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Among the services enumerated are fire protection, law enforcement, beach erosion control, recreation service and facilities, water, streets, sidewalks, street lighting, garbage and trash collection and disposal, waste and sewage collection and disposal, drainage, transportation, indigent health care services, and mental health care services. Subject to the consent of the governing body of the affected municipality, given annually or for a term of years, such MSTU or MSBU may include part or all of the boundaries of the municipality.

[2] Section 125.01(1)(q), Fla. Stat. (1996 Supp.).

[3] Section 125.01(2), Fla. Stat. (1996 Supp.).

[4] Section 125.01(1)(q), Fla. Stat. (1996 Supp.). *And see* s. 125.01(1)(r), Fla. Stat. (1996 Supp.), authorizing the county commission to levy and collect taxes for the providing of municipal services within any municipal service taxing unit; *Gallant v. Stephens*, 358 So. 2d 536, 540 (Fla. 1978), stating that the last sentence of Art. VII, s. 9(b), Fla. Const., provides express authority for ss. 125.01(1)(q) and (1)(r), Fla. Stat., which sanction "taxing units as a method by which counties may tax to provide municipal services, within the 10 mill limit for 'municipal purposes[.]'"

[5] See *generally* s. 768.28, Fla. Stat. (1996 Supp.), containing a limited waiver of sovereign immunity in tort for the state and its agencies and subdivisions, and subsection (9) providing that no officer, employee, or agent of the state or of any of its subdivisions shall be held personally liable in tort unless acting in bad faith or with malicious purpose or a wanton or willful disregard of human rights, safety, or property.