Fire district non-ad valorem assessment

Number: INFORMAL

Date: January 10, 2018

Ms. Maggie D. Mooney-Portale
Mr. R. David Jackson
Attorneys for North River Fire District
6853 Energy Court
Lakewood Ranch, Florida 34240

Dear Ms. Mooney-Portale and Mr. Jackson:

On behalf of the North River Fire District ("District"), you have requested an opinion regarding the following [rephrased][1] question:

Does the District's special act, Chapter 2007-280, Laws of Florida, which authorizes the District to "levy non-ad valorem assessments against *the taxable real estate* lying within its territorial bounds" preclude the District from imposing such assessments against real property that is tax-exempt (but not immune from tax) pursuant to sections 191.009(2)(a) and 191.011, Florida Statutes, which authorize an independent special fire control district to levy non-ad valorem assessments on "*the lands* within the district"?

Attorney General Bondi has asked that I respond to your inquiry.

The charter for the North River Fire District is codified at Chapter 2007-280, Laws of Florida. It establishes the District as an independent special fire district and a public municipal corporation, whose lands are located in Manatee County.[2] Its purposes include, *inter alia*, "the acquisition, construction, care, maintenance, upkeep, and operation of sites for fire stations; fire station and firefighting and rescue equipment" and "the employment of qualified personnel for the operation, enforcement, and furtherance of the district's affairs and business."[3] In furtherance of these purposes,
Section 5 of the District's special act authorizes the District to "levy non-ad valorem assessments against the taxable real estate lying within its territorial bounds."

As a general rule, absent an additional, independent source of statutory authority, a special district may only exercise the powers granted by its enabling legislation, either expressly or by necessary implication.[4] As applied to the District in this case, chapter 191, pertaining to "Independent Special Fire Control Districts" (the "act"), provides this independent source of statutory authority, in addition and supplemental to the District's existing powers.[5]

This is reflected in section 191.004, Florida Statutes ("Preemption of special acts and general acts of local application"). It provides that each "district, regardless of any other, more specific provision of any special act…creating the charter of the district, shall comply with this act," and expresses "the intent of the Legislature that the provisions of this act supersede all special act[s]…which contain the charter of an independent special fire control district and which address the same subjects as this act[.]"[6]

“If two statutes may operate upon the same subject without positive inconsistency or repugnancy in the practical effect and consequences, they should each be given the effect designed for them, *unless a contrary intent clearly appears*.”[7] “In the construction of general and special acts the maxim *generalia specialibus non derogant* applies, and a general act will not be held to repeal or modify a special one embraced within the general terms of the general act, *unless the general act is a general revision of the whole subject*, or unless the two acts are so repugnant and irreconcilable as to indicate a legislative intent that the one should repeal or modify the other.” (Emphasis added.)[8]

Here, although the act “does not repeal any authorization within a special act…providing for the levy and assessment of…special assessments…by a district,”[9] its preemption provisions reflect the Legislature’s intent to promulgate a general revision of the whole subject of independent special fire control district activities, thereby supplementing preexisting special acts in areas of disparity. “Thus, the plain language of the act preempts special act provisions to the extent of any conflict and provides a uniform scheme for accomplishing the goals of independent fire control districts throughout the state.”[10]

The act does provide one exception in this regard. It specifies that it “*does not require any modification* to district financing or operations *which would impair existing contracts*, including collective bargaining agreements, debt obligations, or covenants and agreements relating to bonds validated or issued by the district.” (Emphasis added.)[11]

Based on the foregoing, pursuant to the act, the District may impose, collect, enforce, and fix the rate of non-ad valorem assessments pursuant to the provisions contained in section 191.011, Florida Statutes.[12] Moreover, section 191.009 provides that such “non-ad valorem assessments” may be levied “on the lands within the district.”[13] Therefore, in levying non-ad valorem assessments pursuant to the supplemental authority provided by section 191.011, the District—absent an impairment of its existing contracts—is not constrained to impose such assessments only against taxable real estate within its territorial bounds.

However, the restrictions otherwise applicable to a district’s imposition of non-ad valorem assessments do apply. Among those constraints, state-owned lands are subject to special assessments only when such liability is clearly provided by statute.[14] In construing statutory language, the state is not considered to be within the purview of an operative statute, however general and comprehensive, unless an intent to include the state is manifest from the statute.[15] Absent this requisite statutory language, state- owned lands are not subject to such assessments or liens, even if the liens are not enforced until the property is subsequently transferred to a private purchaser.[16]

Thus, for example, this office determined in Attorney General Opinion 90-47 (1990) that section 403.0893, Florida Statutes, did not expressly or by necessary implication authorize counties and municipalities to levy stormwater utility fees as special assessments on state-owned lands. This office could not conclude, therefore, that state lands were subject to such fees, in the absence of a clear declaration by the Legislature.

Similarly, in Attorney General Opinion 90-85 (1990), this office determined that section 170.01, Florida Statutes—which authorizes a municipality to levy and collect special assessments for

municipal improvements “against property benefited”—did not expressly impose such liability on state-owned lands. Given the absence of a “clear expression of legislative intent” to “impose such liability on state-owned lands,” this office could not “conclude that such lands are subject to a special assessment and lien imposed” pursuant to section 170.01.

Turning to sections 191.009 and 191.011, Florida Statutes, these statutes also do not expressly impose liability on state-owned lands for the non-ad valorem assessments authorized to be levied by independent special fire districts. Accordingly, while the District is not limited to imposing non-ad valorem special assessments pursuant to chapter 191 only on real property which is “taxable,” it may not impose such assessments on state-owned land.

In sum, it appears that, as a result of the supplemental grant of authority in chapter 191, Florida Statutes, non-ad valorem assessments levied by the District consistent with the provisions of chapter 191 are not limited to assessments against “taxable real estate lying within its territorial bounds,” but may be levied “on the lands within the district.” However, the constraints otherwise applicable to the District’s imposition of non-ad valorem assessments pursuant to chapter 191 (including the exemption from such assessments enjoyed by state-owned lands) would apply. I trust that these informal observations will assist you in advising the District regarding its potential actions.

Sincerely,

Teresa L. Mussetto
Senior Assistant Attorney General

TLM/tsh

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[1] The question, as originally phrased by the District, was: “Whether the statutory exemptions from ad valorem taxation also apply to the levy of non-ad valorem assessments”?

[2] *See* Ch. 2007-280, Laws of Fla.

[3] *Id.,* § 7.
[4] *See Forbes Pioneer Boat Line v. Bd. of Comm’rs of Everglades Drainage Dist.*, 82 So. 346 (Fla. 1919).

[5] *See generally* Ch. 191, Fla. Stat. (2017); *see also* Op. Att’y Gen. Fla. 98-53 (1998) (“[S]ection 191.009, Florida Statutes, appears to expand the authority of the Holley-Navarre Fire Protection District and authorize the district to assess ad valorem taxes, non-ad valorem assessments (the rate of which may be greater than that specified in the district's enabling legislation), user charges, and impact fees.”).

[6] See § 191.004, Fla. Stat. (2017).

[7] *Am. Bakeries Co. v. Haines City*, 131 Fla. 790, 801, 180 So. 524, 529 (1938).

[8] *Id.,* 131 Fla. at 800, 180 So. at 528.

[9] *See* § 191.004, Fla. Stat. (2017).

[10] *See* Op. Att'y Gen. Fla. 00-33 (2000).

[11] § 191.004, Fla. Stat. (2017).

[12] *See* § 191.006, Fla. Stat. (2017) ("The district shall have, and the board may exercise by majority vote, the following powers:…(14) To assess and impose upon real property in the district ad valorem taxes and non-ad valorem assessments as authorized by this act."); § 191.009(2), Fla. Stat. (2017) ("Non-ad valorem assessments.—(a) A district may levy non-ad valorem assessments as defined in s. 197.3632 to construct, operate, and maintain those district facilities and services provided pursuant to the general powers listed in s. 191.006, the special powers listed in s. 191.008, any applicable general laws of local application, and a district's enabling legislation."); *see also* § 191.009(2), Fla. Stat. (2017) ("Non-ad valorem assessments shall be imposed, collected, and enforced pursuant to s. 191.011.").

[13] *See* § 191.011(1), Fla. Stat. (2017) (emphasis added).

[14] *See Blake v. City of Tampa*, 156 So. 97 (Fla. 1934); Op. Att'y Gen. Fla. 90-47 (1990).

[15] *See* Op. Att'y Gen. Fla. 69-104 (1969) (concluding that the state was not liable for special assessments imposed by a special water district for waterwork improvements under a special act that did not specifically include the state and its agencies).

[16] *See* Op. Att'y Gen. Fla. 90-85 (1990).