

Creation of special districts

Number: INFORMAL

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The Honorable Mario Diaz-Balart
Representative, District 112
7902 Northwest 36th Street, Suite 202
Miami, Florida 33166

Dear Representative Diaz-Balart:

This is in response to your inquiry on behalf of constituents living in the "8.5 Square Mile Area" of Miami-Dade County who are interested in creating a community development district pursuant to Chapter 190, Florida Statutes, or a drainage and water control district under Chapter 298, Florida Statutes. The area has severe road problems and they have asked for direction in this matter.

Miami-Dade County, under its home rule charter, is authorized to provide a method for the establishment of special taxing districts and other governmental units within its jurisdiction.[1] The county's code makes the board of county commissioners the legislative and governing body of the county and empowers the board to provide for and regulate arterial, toll, and other roads within the county.[2] The commission has the power to establish, merge, and abolish by ordinance special purpose districts that may provide, among other things, streets in the county.[3] The code recognizes that the commission may exercise all powers and privileges granted to municipalities, counties, and county officers by the Florida Constitution and the laws of the state, and that, when specifically authorized by the constitution, it may supersede any general law.[4]

The authority granted under the enabling subsections of section 11, Article VIII of the Florida Constitution, however, is limited by subsections (5) and (6) therein:

"(5) [T]he home rule charter provided for herein shall not conflict with any provision of this Constitution nor of any applicable general laws now applying to Dade County and any other one or more counties of the State of Florida except as expressly authorized in this section nor shall any ordinance enacted in pursuance to said home rule charter conflict with this Constitution or any such applicable general law except as expressly authorized herein

(6) Nothing in this section shall be construed to limit or restrict the power of the Legislature to enact general laws which shall relate to Dade County and any other one or more counties of the state of Florida or to any municipality in Dade County and any other one or more municipalities of the State of Florida relating to county or municipal affairs and all such general laws shall apply to Dade County and to all municipalities therein to the same extent as if this section had not been adopted and such general laws shall supersede any part or portion of the home rule charter provided for herein in conflict therewith and shall supersede any provision of any . . . charter of any municipality in Dade County in conflict therewith."

Moreover, subsection (9) of section 11 declares it to be the intent of the Legislature and the electors of this state that:

"[T]he provisions of this Constitution and general laws which shall relate to Dade County . . . shall be the supreme law in Dade County, Florida, except as expressly provided herein and this section shall be strictly construed to maintain such supremacy of this Constitution and of the Legislature in the enactment of general laws pursuant to this Constitution."

Thus, general law controls over the provisions of Dade County's charter and the ordinances adopted pursuant thereto, unless there is express constitutional authorization otherwise. In this instance, Miami-Dade County has been constitutionally empowered to provide a method for creating special districts or other governmental units. Accordingly, Miami-Dade County's Code of Ordinances may contain provisions for the creation of an entity capable of providing the road improvements sought by the individuals who have contacted you.

You have specifically asked, however, for advice regarding the use of state statutes in the creation of a district to carry out road improvements.

Chapter 190, Florida Statutes, provides the exclusive and uniform method for the creation of community development districts. Districts with a size of 1,000 acres or more are established by rule, adopted pursuant to Chapter 120, Florida Statutes, by the Florida Land and Water Adjudicatory Commission (commission).[5] A petition to the commission containing specific information and data, along with a filing fee of \$15,000 to the county and to each municipality with boundaries contiguous with or contained in whole or in part within the proposed district, is the first step in seeking the formation of a community development district.[6] The affected county and municipalities may each conduct a public hearing to evaluate the factors that will be considered by the commission and may by resolution either support or object to the granting of the petition.[7] Further, a local public hearing before an administrative hearing officer must be conducted.[8] The commission, after considering the entire record of the local hearing, the transcript of the hearing, resolutions by affected local governments, and specific factors enumerated in section 190.005(1)(c), Florida Statutes, makes a determination to either grant or deny the petition.[9]

Districts with less than 1,000 acres are created by ordinance adopted by the county commission of the county having jurisdiction over the majority of land within the district.[10] Similar requirements for a petition and a public hearing apply to the creation of such a district.[11] If all the land in a proposed district lies within the boundaries of a municipality, then the petition must be filed with that entity, which then assumes the same duties imposed upon the county in handling the petition.[12] The governing body of the county or municipality, however, may transfer the petition to the Florida Land and Water Adjudicatory Commission to make the determination of granting or denying the petition, thereby relinquishing any right to make the decision.[13]

Water control districts established after July 1, 1980, may only be created pursuant to section 125.01, Florida Statutes, or by special act of the Legislature.[14] Section 125.01, Florida Statutes, recognizes the home rule powers of counties to carry on county government to the extent not inconsistent with general or special law. Counties are empowered, among other

things, to establish programs for drainage,[15] provide roads,[16] establish municipal service taxing or benefit units to provide streets to all or a portion of the unincorporated area of the county,[17] and create special districts to include both incorporated and unincorporated areas to provide municipal services and facilities from funds derived from service charges, special assessments, or taxes within such district only.[18] These powers, along with the authority to enact ordinances and resolutions necessary for the exercise of its powers, clearly support a county's ability to create a water control district under Chapter 298, Florida Statutes.

As discussed above, the Florida Constitution grants Miami-Dade County the power to prescribe the method of creating special districts within its jurisdiction. The Florida Constitution and general laws, however, are "supreme" in Metropolitan Dade County, except as expressly provided in the constitutional amendment creating the Miami-Dade County Charter, and the amendment must be "strictly construed" to maintain such supremacy.[19] Consequently, whenever "any doubt exists as to the extent of a power attempted to be exercised which may affect the operation of a state statute, the doubt is to be resolved against the ordinance and in favor of the statute." [20]

The alternative of creating a water control district in Miami-Dade County by special act of the Legislature poses a problem. It is well settled that the constitutional grant of home rule to Miami-Dade County empowered the county to exercise home rule in carrying out county business. As a consequence, while the Legislature may enact general laws that affect the county and any other one or more counties in the same manner, no special act may address a situation specific to Miami-Dade County.[21]

I trust these informal comments are helpful to your constituents.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] See s. 11(1)(e), Art. VIII, Fla. Const.

[2] Art. I, s. 1.01(A)(1), Code of Metropolitan Dade County.

[3] Art. I, s. 1.01(A)(11), Code of Metropolitan Dade County.

[4] Art. I, ss. 1.01(A)(21) and (24), Code of Metropolitan Dade County.

[5] Section 190.005(1), Fla. Stat.

[6] Section 190.005(1)(a)-(b), Fla. Stat.

[7] Section 190.005(1)(c), Fla. Stat.

[8] Section 190.005(1)(d), Fla. Stat.

[9] Section 190.005(1)(e), Fla. Stat.

[10] Section 190.005(2), Fla. Stat.

[11] Section 190.005(2)(a)-(c), Fla. Stat.

[12] Section 190.005(2)(e), Fla. Stat.

[13] Section 190.005(2)(f), Fla. Stat.

[14] Section 298.01, Fla. Stat.

[15] Section 125.01(1)(j), Fla. Stat.

[16] Section 125.01(1)(m), Fla. Stat.

[17] Section 125.01(1)(q), Fla. Stat.

[18] Section 125.01(5)(a), Fla. Stat.

[19] *Metropolitan Dade County v. City of Miami*, 396 So. 2d 144, 148 (Fla. 1980).

[20] *Rinzler v. Carson*, 262 So. 2d 661, 668 (Fla. 1972); see *Dade County v. Acme Speciality Corp.*, 292 So. 2d 378, n. 2 (Fla. 3d DCA 1974) ("County ordinances under [the] Home Rule Charter are to be treated the same as municipal ordinances.")

[21] *Dade County v. Dade County League of Municipalities*, 104 So. 2d 512, 517 (Fla. 1958) (implicit in the language of the Constitution is the proposition that upon the adoption of the county home rule charter local bills for the governance of Dade County municipalities are a thing of the past); Op. Att'y Gen. Fla. 89-09 (1989) (following adoption of the Dade County Home Rule Charter, the Legislature is constitutionally limited to enacting only general laws relating to Dade County and the municipalities therein).