Counties - Municipal Service Taxing or Benefit Unit

Number: AGO 2016-13

Date: October 06, 2016

Subject:
Counties - Municipal Service Taxing or Benefit Unit

Mr. Robert B. Shillinger
County Attorney
Office of the County Attorney
1111 12th Street, Suite 408
Key West, Florida 33040

RE: COUNTIES – MUNICIPAL SERVICE TAXING OR BENEFIT UNIT – ESSENTIAL MUNICIPAL SERVICES – whether the county may expand an existing MSTU/MSBU to provide landscaping, signage, canal maintenance, and canal restoration under s. 125.01(1)(q), Fla. Stat.

Dear Mr. Shillinger:

On behalf of Monroe County, you have asked for an opinion on the following question:

Whether Monroe County is authorized pursuant to section 125.01(1)(q), Florida Statutes, to establish a municipal service taxing or benefit unit for landscaping, signage, and canal maintenance and restoration?

In sum:

Section 125.01(1)(q), Florida Statutes, allows a county to create municipal service taxing or benefit units for the provision of enumerated services and "other essential facilities and municipal service[s]." Whether the intended landscaping, signage, canal maintenance, and canal restoration are essential municipal services is a mixed question of law and fact that the County, rather than this office, must determine.

You state that Monroe County has a municipal service benefit unit that was established in 1992 to provide security services for residential areas of Duck Key by means of annual non-ad valorem assessments.[1] You would like to expand the Duck Key Security District to provide landscaping, signage, and canal maintenance and restoration, within which you include property beautification, lawn trimming, planting and landscaping, installation and repair of signage in the residential areas and rights-of-way, mangrove trimming along canals and waterways, and other canal maintenance and restoration projects to improve navigability and water quality. You indicate that the County understands that if these new services are authorized, the County must amend the ordinance used to create the Duck Key Security District, which is limited to the provision of security services.

Section 125.01(1)(q), Florida Statutes, authorizes the county's legislative and governing body –

the board of county commissioners – to establish a municipal service taxing unit ("MSTU") and/or a municipal service benefit unit ("MSBU") to provide the kinds of municipal services enumerated in the statute. Specifically, the statute provides that county government may:

"(q) Establish, and subsequently merge or abolish those created hereunder, municipal service taxing or benefit units for any part or all of the unincorporated area of the county, within which may be provided fire protection; law enforcement; beach erosion control; recreation service and facilities; water; alternative water supplies, including, but not limited to, reclaimed water and water from aquifer storage and recovery and desalination systems; streets; sidewalks; street lighting; garbage and trash collection and disposal; waste and sewage collection and disposal; drainage; transportation; indigent health care services; mental health care services; and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only."

Because the services specifically enumerated in paragraph (q) do not include those that you propose, namely landscaping, signage, canal maintenance, and canal restoration, these would only be allowed if the county commission determines that they qualify as "other essential facilities and municipal services."

As you acknowledge, section 125.01, Florida Statutes, does not define "other essential facilities and municipal services." Use of the term "other" makes clear that the services a county seeks to provide through an MSTU or MSBU must be comparable to the services previously enumerated therein. "The powers enumerated in section 125.01 are not all inclusive, and a county's authority includes that which is 'reasonably implied or incidental to carrying out [its] enumerated powers,' limited only by general or special law."[2] In section 125.01(3)(b), Florida Statutes, the Legislature stated that the provisions of the statute must be "liberally construed in order to effectively carry out the purpose of this section and to secure for the counties the broad exercise of home rule powers authorized by the State Constitution."

The term "essential" applies both to "facilities and municipal services."[3] Absent any statutory definition, it is useful to consider how the term has been employed elsewhere in the municipal-services context.[4] The Florida Supreme Court has specifically addressed the meaning of the term "essential" as it is used when defining "municipal or public purpose" under Article VII, section 3(a) of the Florida Constitution. In order to qualify for an exemption from ad valorem taxation under that provision,[5] an activity must be shown to be "essential to the health, morals, safety, and general welfare of the people within the municipality."[6] (e.s.) The court quoted three dictionary definitions of "essential" – basic, necessary, or indispensable – and concluded that "inherent in the word essential is the concept of great need or necessity."[7]

Accordingly, it is reasonable to conclude that the term "essential" in section 125.01(q), Florida Statutes, indicates that there must be a great need or necessity for the non-enumerated municipal services that are sought to be provided to district taxpayers within an MSTU or MSBU.

This office has looked to section 170.01, Florida Statutes, which constitutes a lengthy listing of municipal services that may be appropriately funded by special assessment, to determine whether a county might provide a particular service to certain property by special assessment.[8] Landscaping and signage are specifically included as municipal services under section

170.01(1), Florida Statutes, as are “reconstruction, repair, renovation” of canals, and “improvements to permit the passage and navigation of watercraft.”[9]

The determination of whether the provision of landscaping, signage, and canal maintenance and restoration constitute services essential to the people of Monroe County’s proposed MSTU or MSBU presents a mixed question of law and fact which is thus beyond the purview of this office.[10]

Accordingly, it is my opinion that under section 125.01(1)(q), Florida Statutes, which allows a county to provide essential municipal services to municipal service taxing or benefit units, the County must decide the mixed question of law and fact as to whether the intended landscaping, signage, canal maintenance, and canal restoration are essential municipal services.

Sincerely,

Pam Bondi
Attorney General

PB/ebg

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[1] Monroe County collects the assessment on each property within the Security District pursuant to the uniform method for collection of non-ad valorem assessments set forth in s. 197.3632, Fla. Stat.

[2] *Donnelly v. Marion County*, 851 So. 2d 256, 261 (Fla. 5th DCA 2003) (quoting *Sockol v. Kimmins Recycling Corp.*, 729 So. 2d 998, 1001 [Fla. 4th DCA 1999]).

[3] *See, e.g., State v. Huggins*, 802 So. 2d 276, 277-78 (Fla. 2001) (in the phrase, “occupied structure or dwelling,” in a sentencing statute, the adjective “occupied” modified both “structure” and “dwelling”). “Phrases constructed like the phrase at issue … are commonly construed to mean that the adjective modifies subsequent nouns, for example, ‘qualified man or woman’ and ‘governmental fine or penalty’ mean ‘qualified man or qualified woman’ and ‘governmental fine or governmental penalty,’ respectively.” *Id.* at 278.

[4] *See, e.g., Miele v. Prudential-Bache Sec., Inc.,* 656 So. 2d 470, 472 (Fla. 1995) (“[T]he context in which a term is used may be referred to in ascertaining the meaning of that term.”); *Sneed v. State*, 736 So. 2d 1274, 1276 (Fla. 4th DCA 1999) (the meaning of a statutory term should be consistent with “context and ordinary usage,” and “the surrounding body of law into which the provision must be integrated”).

[5] Art. VII, s. 3(a), Fla. Const., provides, in part: “All property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation.”

[6] *Fla. Dep’t of Revenue v. City of Gainesville*, 918 So. 2d 250, 264 (Fla. 2005) (concluding that a statute requiring local governments to pay ad valorem taxes on their telecommunications services did not facially conflict with art. VII, s. 3(a), because such services were not necessarily

essential to the health, morals, safety, and general welfare of the people within such local government). *Accord City of Ft. Pierce v. Treasure Coast Marina,* 2016 WL 1660600 (Fla. 4th DCA 2016). *See also State v. City of Jacksonville,* 50 So. 2d 532, 535 (Fla. 1951) ("Though there was a time when a municipal purpose was restricted to police protection or such enterprises as were strictly governmental that concept has been very much expanded and a municipal purpose may now comprehend all activities essential to the health, morals, protection and welfare of the municipality.").

[7] *Fla. Dep't of Revenue,* 918 So. 2d at 264.

[8] *See* Op. Att'y Gen. Fla. 01-82 (2001) (concluding that the county is authorized to levy a special assessment for replacing above-ground with underground electric transmission lines, so long as supported by appropriate findings).

[9] *See City of Winter Springs v. State,* 776 So. 2d 255, 257 n.2 (Fla. 2001) (landscaping and signage within a special district were "well-recognized" as municipal services, *see, e.g.*, s. 170.01(1), Fla. Stat., and were the proper subjects of a special assessment bond when supported by legislative findings of the city).

[10] *See* Op. Att'y Gen. Fla. 99-70 (1999) (observing that the municipality must make the final determination as to whether maintenance of its canal system is a valid transportation expenditure under s. 336.025).