Emergency medical service assessment

Number: AGO 2012-09

Date: February 29, 2012

Subject:
Emergency medical service assessment

Mr. C.J. Thompson
Baker County Manager
55 North Third Street
Macclenny, Florida 32063

RE: COUNTIES--SPECIAL ASSESSMENTS--EMERGENCY MEDICAL SERVICES--levy of county emergency medical service assessment. s. 125.271, Fla. Stat.

Dear Mr. Thompson:

On behalf of the Baker County Board of County Commissioners, you have asked for my opinion on substantially the following question:

Pursuant to section 125.271, Florida Statutes, may Baker County levy a special assessment for emergency medical services?

In sum:

Section 125.271, Florida Statutes, authorizes qualifying counties, including Baker County, to fund the costs of emergency medical services through the levy of a "county emergency medical service assessment" pursuant to sections 1 and 9 of Article VII, Florida Constitution, which authorize local taxes as provided by general law.

You ask whether section 125.271, Florida Statutes, which authorizes "county emergency medical service assessments," would provide authority for Baker County to fund emergency medical services as set forth therein. The statute provides that:

"(1) As used in this section, the term 'county' means:
(a) A county that is within a rural area of critical economic concern as designated by the Governor pursuant to s. 288.0656;
(b) A small county having a population of 75,000 or fewer on the effective date of this act which has levied at least 10 mills of ad valorem tax for the previous fiscal year; or
(c) A county that adopted an ordinance authorizing the imposition of an assessment for emergency medical services prior to January 1, 2002.
Once a county has qualified under this subsection, it always retains the qualification.
(2) A county may fund the costs of emergency medical services through the levy of a special assessment that apportions the cost among the property based on a reasonable methodology that charges a parcel in proportion to its benefits.

(3) The authorization provided in this section shall be construed to be general law authorization pursuant to ss. 1 and 9 of Art. VII of the State Constitution.
(4) All special assessments for emergency medical services levied by a county prior to the effective date of this section are ratified and validated in all respects if they would have been valid had this section been in effect at the time they were levied; however, this subsection shall not validate assessments in counties with litigation challenging the validity of an assessment pending on January 1, 2002."[1]

Baker County has been designated a part of the North Central Florida Rural Area of Critical Economic Concern by the Governor pursuant to section 288.0656, Florida Statutes.[2] Thus, Baker County would qualify as a "county" within the scope of section 125.271(1)(a), Florida Statutes, and is authorized to levy a "county emergency medical service assessment" as provided therein.

This office has received a memorandum of law from an interested party in this matter suggesting that the issue of the imposition of a special assessment for emergency medical services has been resolved by the Florida Supreme Court and that such services cannot be funded by special assessment as they cannot be determined to provide a special benefit to the assessed property, a fundamental requirement of special assessments. The Florida Supreme Court addressed the question of whether a special assessment could be used to fund emergency medical services in *City of North Lauderdale v. SMM Properties, Inc.*, a 2002 Florida Supreme Court case.[3] In that case the Court relied on a two-part test to review the validity of the city's special assessment[4] and held that "emergency medical services did not provide a special benefit to the assessed property because such services benefit people, not property." Further, the Court suggested that "the emergency medical services portion of the special assessment has the indicia of a tax because it fails to provide a special benefit to real property."[5]

The situation you describe in Baker County is distinguishable from the decision in the City of North Lauderdale, however, in that the Legislature has specifically recognized that "[t]he authorization provided in [section 125.271, Florida Statutes] shall be construed to be general law authorization pursuant to ss. 1 and 9 of Art. VII of the State Constitution[,]"[6] *i.e.*, a tax authorized by general law.[7]

The Florida Supreme Court has explained the distinction between special assessments and taxes in a number of cases including *City of Boca Raton v. State*,[8] in which the Court explained that:

"[A] legally imposed special assessment is not a tax. Taxes and special assessments are distinguishable in that, while both are mandatory, there is no requirement that taxes provide any specific benefit to the property; instead, they may be levied throughout the particular taxing unit for the general benefit of residents and property. On the other hand, special assessments must confer a specific benefit upon the land burdened by the assessment. . . . As explained in *Klemm v. Davenport*"[9]

A tax is an enforced burden of contribution imposed by sovereign right for the support of the government, the administration of the law, and to execute the various functions the sovereign is called on to perform. A special assessment is like a tax in that it is an enforced contribution from

the property owner, it may possess other points of similarity to a tax but it is inherently different and governed by entirely different principles. It is imposed upon the theory that, that portion of the community which is required to bear it receives some special or peculiar benefit in the enhancement of value of the property against which it is imposed as a result of the improvement made with the proceeds of the special assessment. It is limited to the property benefitted, is not governed by uniformity and may be determined legislatively or judicially."[10]

While the Legislature has used the term "assessment" in section 125.271, Florida Statutes, the Legislature has identified the assessment as a general tax, authorized pursuant to Florida constitutional provisions and available to those counties falling within the scope of the definition of "county" in that statute.[11]

In sum, it is my opinion that section 125.271, Florida Statutes, authorizes qualifying counties, including Baker County, to fund the costs of emergency medical services through the levy of a "county emergency medical service assessment" pursuant to sections 1 and 9 of Article VII, Florida Constitution, which authorize local taxes as provided by general law.

Sincerely,

Pam Bondi
Attorney General

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[1] A statute is presumptively valid and must be obeyed and given effect unless and until judicially declared invalid. *Falco v. State*, 407 So. 2d 203 (Fla. 1981); *Belk-James, Inc. v. Nuzum* , 358 So. 2d 174, 177 (Fla. 1978); *Evans v. Hillsborough County*, 186 So. 193, 196 (Fla. 1938). The Attorney General cannot declare statute unconstitutional or invalid or advise any officer to disregard legislative direction or mandate. On the contrary, statute is presumed to be constitutional and must be given effect until judicially declared invalid. *Cf. Pickeril v. Schott*, 55 So. 2d 716 (Fla. 1951) and *State ex rel. Atlantic Coastline R. Co. v. State Board of Equalizers*, 94 So. 681, 682 (Fla. 1922).

[2] *See* State of Florida, Office of the Governor, Executive Order Numbers 03-74 (2003) and 08-132 (2008).

[3] 825 So. 2d 343 (Fla. 2002).

[4] To be considered a valid special assessment, an assessment must satisfy a two-pronged test: first, "the property burdened by the assessment must derive a 'special benefit' from the service provided by the assessment" and second, "the assessment for the services must be properly apportioned." *Desiderio Corporation v. City of Boynton Beach*, 39 So. 3d 487, 493 (Fla. 4th DCA 2010) citing *Lake County v. Water Oak Management Corp.*, 695 So. 2d 667, 669 (Fla. 1997).

[5] *Id.* at 350.

[6] Section 125.271(3), Fla. Stat.

[7] *And see* Senate Staff Analysis and Economic Impact Statement, CS/SB 2178, s. III. "Effect of Proposed Changes," dated Feb. 26, 2002 ("The CS includes language providing that the authorization provided in this new section 'shall be construed to be general law authorization pursuant to ss. 1 and 9 of Art. VII, of the State Constitution' – a tax authorized by general law").

[8] 595 So. 2d 25 (Fla. 1992). *See also City of North Lauderdale v. SMM Properties, Inc.*, 825 So. 2d 343 (Fla. 2002); *Collier County v. State*, 733 So. 2d 1012, 1016-17 (Fla. 1999).

[9] 100 Fla. 627, 631-34, 129 So. 904, 907-08 (1930).

[10] 595 So. 2d 25 at 29 (Fla. 1992).

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