

Soil & Water Conservation District, tax authority

Number: AGO 2002-85

Date: December 20, 2002

Subject:

Soil & Water Conservation District, tax authority

The Honorable Tom Visconti
Supervisor, Volusia County Soil and
Water Conservation District
Post Office Box 7
Ormond Beach, Florida 32175

RE: SPECIAL DISTRICTS–SOIL & WATER CONSERVATION DISTRICT– TAXATION–authority of district to tax; responsibilities of district. ss. 582.20, 582.21, 582.22, 582.23, and 582.331, Fla. Stat., and Ch. 582, Fla. Stat.

Dear Mr. Visconti:

On behalf of the Board of Supervisors of the Volusia County Soil & Water Conservation District, you ask substantially the following questions:

1. Is a soil and water conservation district established pursuant to Chapter 582, Florida Statutes, authorized by that chapter to levy taxes?
2. Is a soil and water conservation district limited to only combating flood damage and soil erosion?

In sum:

1. A soil and water conservation district established under the procedures prescribed in Chapter 582, Florida Statutes, is not authorized by that chapter to levy taxes, although it may establish a watershed improvement district as provided in Chapter 582, Florida Statutes, as a subdistrict of the soil and water conservation district; such watershed improvement district may levy ad valorem taxes for the purposes of the district or to amortize indebtedness or bonds.
2. A soil and water conservation district established pursuant to Chapter 582, Florida Statutes, is not limited to combating flood damage and soil erosion but has a variety of responsibilities relating to soil and water conservation. As a special district created by law, the district is limited to those powers specified by statute or necessarily implied therefrom in order to carry out a statutorily imposed duty.

Question One

The power of the state and local governments to levy taxes is governed by the Florida

Constitution. Article VII, section 1(a), Florida Constitution, provides:

"No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law."

Article VII, section 9(a), Florida Constitution, provides in pertinent part that "special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes" Thus, special districts have no independent, inherent power to tax, but may levy taxes only as expressly authorized by law.

Chapter 582, Florida Statutes, provides for the establishment of a soil and water conservation district upon petition to the Department of Agriculture and Consumer Services of 25 owners of land lying within the territory proposed to be organized into a district.[1] The district, once established, constitutes a governmental subdivision of the state and a public body corporate and politic,[2] and is governed by an elected board of supervisors.[3]

The chapter, however, does not provide for the imposition of taxes by the board of supervisors of the soil and water conservation district. Pursuant to section 582.055(3), Florida Statutes, the Department of Agriculture and Consumer Services is authorized to receive gifts, appropriations, materials, equipment, lands and facilities, and to disburse them for the use and benefit of the soil and water conservation districts. Moreover, an examination of the statutes indicates that the district is authorized to obtain and acquire property, by purchase, gift, bequest, devise or otherwise, and to receive income therefrom;[4] to accept donations, gifts, and contributions in money, services, materials, or otherwise;[5] and to require contributions as a condition to extending any benefits under Chapter 582, Florida Statutes to, or perform work on, any lands not owned by the state or its agencies.[6] The board of supervisors of the soil and water conservation district, however, is not authorized by Chapter 582, Florida Statutes, to impose taxes.

Watershed improvement districts may be formed as subdistricts of soil and water conservation districts

"for the development and execution of plans and projects for works of improvement for the control and prevention of soil erosion, flood prevention, conservation, development, and utilization of soil and water resources, disposal of water, fish and wildlife or recreational development, preservation and protection of land and water resources, and protection and promotion of the health, safety, and general welfare of the people of this state."[7]

Section 582.43, Florida Statutes, provides in part:

"The watershed improvement district shall have all the powers of such soil and water conservation district, and *in addition thereto shall have the authority to levy a tax*, as hereinafter provided, to be used for the purposes of the watershed improvement district[.]" (e.s.)

Section 582.44, Florida Statutes, provides that the board of directors of a watershed improvement district may annually levy a uniform ad valorem tax on all taxable property within

the district not to exceed 3 mills or such rate as approved by qualified electors pursuant to section 582.36, Florida Statutes.

Accordingly, in light of the above, I am of the opinion that a soil and water conservation district established under the procedures prescribed in Chapter 582, Florida Statutes, is not authorized by that chapter to levy taxes, although it may establish a watershed improvement district as provided in Chapter 582, Florida Statutes, as a subdistrict of the soil and water conservation district. The watershed improvement district may levy ad valorem taxes for the purposes of the district or to amortize indebtedness or bonds.

Question Two

You refer to Attorney General Opinion 81-24, in which this office stated that soil and water conservation districts have "broad powers to combat flood damage and soil erosion." That opinion concluded that such a district does not have any authority with respect to sewage collection, disposal or treatment facilities. You ask whether the powers of a soil and water conservation district are limited to flood damage and soil erosion.

Unlike counties and municipalities, which have been granted home rule powers, soil and water conservation districts possess no inherent or home rule powers. Created by statute for specific limited purposes, such districts may exercise only those powers and authority as have been granted by law.[8]

The district is, as its name implies, responsible for soil and water conservation. It is specifically authorized to conduct surveys, investigations, and research relating to soil erosion and its prevention; to conduct demonstration projects within the district; to carry out preventive and control measures, with the consent of the owners or occupants of those lands affected; to cooperate or enter into agreements with owners or occupants of lands within the district, or with any agency, governmental or otherwise, in the soil and water conservation operations; to make available to landowners and occupiers within the district agricultural and engineering machinery and equipment, fertilizer, seeds, and seedlings, and such other material or equipment as will assist in conservation activities; to make, amend, and repeal rules and regulations not inconsistent with the chapter, to carry into effect its purposes; and various other powers.[9]

In addition, the district supervisors may formulate soil and water conservation regulations governing the use of lands within the district, which may include provisions regarding engineering operations, observance of particular methods of cultivation, specifications of cropping programs and tillage practices, and the retirement from cultivation of highly erosive areas or of areas in which cultivation would interfere with erosion control.[10] The supervisors may also oversee and enforce the performance of work under land-use regulations.[11]

Accordingly, I am of the opinion that a soil and water conservation district established pursuant to Chapter 582, Florida Statutes, is not limited to combating flood damage and soil erosion but has a variety of responsibilities relating to soil and water conservation. As a special district created by law, the district is limited to those powers specified by statute or necessarily implied therefrom in order to carry out a statutorily imposed duty.

Sincerely,

Richard E. Doran
Attorney General

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[1] Section 582.10-582.15, Fla. Stat.

[2] Section 582.20, Fla. Stat.

[3] Section 582.18, Fla. Stat. *And see* s. 582.19, Fla. Stat., setting forth the qualifications and tenure of the supervisors.

[4] *See* s. 582.20(5), Fla. Stat., providing:

"To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise or otherwise, any property, real or personal, or rights or interests therein; to maintain, administer, and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this chapter; and to sell, lease, or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this chapter[.]"

[5] *See* s. 582.20(9), Fla. Stat., providing in part that the district may

"accept donations, gifts, and contributions in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from others, and to use or expend such moneys, services, materials or other contributions in carrying on its operations."

[6] *See* s. 582.20(11), Fla. Stat.

[7] Section 582.331, Fla. Stat. *And see* ss. 582.334-582.48, Fla. Stat., providing for the operation and powers of such districts.

[8] *See, e.g.,* Op. Att'y Gen. Fla. 90-63 (1990) (in the absence of a statute authorizing the recall of a supervisor of a water control district, the landowners of such a district are not authorized to establish procedures for the recall of a supervisor); and Op. Att'y Gen. Fla. 81-17 (1981). *And see Forbes Pioneer Boat Line v. Board of Commissioners of Everglades Drainage District*, 82 So. 346 (Fla. 1919).

[9] *See* s. 582.20, Fla. Stat.

[10] *See* ss. 582.21 and 582.22, Fla. Stat.

[11] See s. 582.23, Fla. Stat.