

Counties, infrastructure surtax used to fund engineers

Number: AGO 95-73

Date: November 27, 1995

Subject:

Counties, infrastructure surtax used to fund engineers

Mr. David G. Tucker
Escambia County Attorney
14 West Government Street, Room 411
Pensacola, Florida 32501

RE: COUNTIES--LOCAL GOVERNMENT INFRASTRUCTURE SURTAX--TAXATION--use of infrastructure surtax proceeds to fund engineer positions responsible for land acquisition activities. s. 212.055(2), Fla. Stat.

Dear Mr. Tucker:

On behalf of the Board of County Commissioners of Escambia County, you ask substantially the following question:

May the proceeds of the discretionary local government infrastructure surtax authorized by section 212.055(2), Florida Statutes, be used to fund engineering personnel responsible for the acquisition of rights of way for projects funded by the infrastructure surtax?

In sum:

Proceeds from the discretionary local government infrastructure surtax may be used to fund engineering personnel responsible for the acquisition of rights of way for projects funded by the surtax, to the extent that the work of such personnel is related to the acquisition, improvement, design or engineering of capital facilities.

You state that the county proposes to fund two engineer positions within the county's Department of Public Works with proceeds from the discretionary infrastructure surtax. The funds would be used to pay for those work hours in which the engineers are actively engaged in preparing documents necessary for the acquisition of rights of way needed for projects funded by the surtax, contacting individuals whose signatures are required to carry out the transactions and explaining the design criteria of the project, and participating in the determination of lands appropriate for acquisition.

Section 212.055(2), Florida Statutes, authorizes each county to levy a discretionary sales surtax pursuant to an ordinance enacted by a majority of the members of the county governing authority and approved by a majority of the electors of the county voting in a referendum on the surtax.[1] The proceeds of the surtax and any interest accrued thereon are to be used to "finance, plan, and construct infrastructure and to acquire land for public recreation or

conservation or protection of natural resources and to finance the closure of county-owned or municipally owned solid waste landfills[.]”[2] The statute prohibits the use of the surtax proceeds or any interest accrued thereon “for operational expenses of any infrastructure[.]”[3]

Section 212.055(2)(d)2., Florida Statutes (1994 Supp.), defines the term “infrastructure” as follows:

- "a. Any fixed capital expenditure or fixed capital outlay associated with the construction, reconstruction, or improvement of public facilities which have a life expectancy of 5 or more years and *any land acquisition, land improvement, design, and engineering costs related thereto.*
- b. A fire department vehicle, an emergency medical service vehicle, a sheriff's office vehicle, a police department vehicle, or any other vehicle, and such equipment necessary to outfit the vehicle for its official use or equipment that has a life expectancy of at least 5 years." (e.s.)

The plain language of the statute contemplates the use of surtax proceeds for expenses incurred during the acquisition, improvement, design or engineering of capital facilities. Thus, the statute would appear to authorize the use of such proceeds to pay engineering personnel for performing tasks associated with the acquisition of rights of way necessary for projects funded by the surtax. The work hours in which the engineers are actively engaged in preparing documents necessary for the acquisition of rights of way needed for projects funded by the surtax, contacting individuals whose signatures are required to carry out the transactions and explaining the design criteria of the project, and participating in the determination of lands appropriate for acquisition, would all be related to land acquisition and engineering for infrastructure projects.

In light of the clear legislative intent to allow the expenditure of surtax proceeds for planning and constructing infrastructure, as well as the specific approval to spend funds for acquisition, design and engineering costs related thereto, section 212.055(2)(d)2., Florida Statutes, would authorize the county to use local government infrastructure surtax proceeds to pay engineering personnel for performing tasks associated with the acquisition of rights of way necessary for infrastructure projects.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] See s. 212.055(2)(a)1., Fla. Stat. (1994 Supp.), also providing that governing bodies of the municipalities representing a majority of the county's population may adopt uniform resolutions establishing the rate of the surtax and calling for a referendum on the surtax, thereby placing the levy of the surtax on the ballot such that it will take effect if approved by a majority of the electors of the county voting in the referendum on the surtax.

[2] Section 212.055(2)(d)1., Fla. Stat. (1994 Supp.).

[3] *Id.*