Municipalities, special assessments for fire protection

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Mr. Gene Marciniak
2421 Brookside Avenue
Kissimmee, Florida 34744

Dear Mr. Marciniak:

Your letter to Senator Bill Nelson was forwarded by his office to Attorney General Bill McCollum.

While this office is precluded from providing legal opinions or advice to private individuals, in an effort to be of assistance, I would generally note the following. Florida courts have recognized that special assessments are not taxes. As stated by the Florida Supreme Court in *Boca Raton v. State*, 595 So. 2d 25 (1992),

“[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*, 129 So. 904, 907-08 (1930):

"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." (e.s.)

Moreover, the courts have recognized that the governing body of a municipality has the authority to impose a special assessment under its home rule powers. *See Boca Raton v. State, supra*, holding that the city, in levying the special assessment at issue, did not have to follow the requirements of Chapter 170, Florida Statutes, which provided a "supplemental, additional, and alternative method of procedure for the benefit of all cities, towns, municipal corporations of the state," but was free to exercise its home rule powers to develop its own procedures.

In *Lake County v. Water Oak Management Corporation*, 695 So. 2d 667, 669 (Fla. 1997), the Florida Supreme Court reiterated the test for determining the validity of a special assessment:

"In reviewing a special assessment, a two-prong test must be addressed: (1) whether the

services at issue provide a special benefit to the assessed property; and (2) whether the assessment for the services is properly apportioned. *Sarasota County [v. Sarasota Church of Christ]*, 667 So. 2d at 183; *City of Boca Raton v. State*, 595 So. 2d 25, 30 (Fla. 1992)."

The issue before the Court in that case was whether Lake County's fire protection services, funded by a special assessment, provided a special benefit to the assessed properties. The Court answered the certified question in the affirmative, finding the fire protection services did provide a special benefit to the assessed properties, because at a minimum, fire protection services provide for lower insurance premiums and enhance the value of property. 695 So. 2d at 669. The program funded by the special assessment in *Lake County* also involved first-response medical aid.

Subsequently in *City of North Lauderdale v. SMM Properties, Inc.*, 825 So. 2d 343 (Fla. 2002), the Court distinguished between first-response medical aid normally provided by firefighter personnel and emergency medical services. While recognizing that fire protection services funded by a special assessment were permissible, the Court struck down the emergency medical services portion of the special assessment because it failed to provide a special benefit to real property. *Compare, Quietwater Entertainment, Inc. v. Escambia County*, 890 So. 2d 525 (Fla. 1st DCA 2005), in which the court upheld the imposition of special assessments for law enforcement, stating

"In each of the above cases [which included *City of North Lauderdale]*, the real properties subject to the special assessment were also subject to ad valorem taxation. The subject leaseholds here, however, escape ad valorem taxation. *See Bell v. Bryan*, 505 So. 2d 690 (Fla. 1st DCA 1987). Further, the competent substantial record evidence supports the county commission's legislative findings of benefit to the subject leaseholds. *See City of North Lauderdale*, 825 So. 2d at 348. The leaseholds are located on an island which the undisputed facts in the record reflect has unique tourist and crowd control needs requiring specialized law enforcement services to protect the value of the leasehold property on the island and is subject to mosquito infestation requiring mosquito control services enhancing the habitation of the island and the value of the leaseholds. Given the record before us, we cannot say that the County Commission's legislative findings of special benefit are palpably arbitrary. Accordingly, we agree with the trial court that, given the unique nature and needs of the subject leaseholds, the special assessments are not invalid, *see Williams v. Escambia County*, 725 So. 2d 392 (Fla. 1st DCA 1999), and we affirm the judgment on appeal."

You may wish to discuss these issues with the city attorney. I trust, however, that the above informal comments will be of some assistance.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t

cc: The Honorable Bill Nelson