Weeki Wachee acquisition by city

Number: INFORMAL

Date: November 04, 2003

Mr. Joseph M. Mason
Weeki Wachee City Attorney
Post Office Box 1900
Brooksville, Florida 34605-1900

Dear Mr. Mason:

On behalf of the City of Weeki Wachee, you ask whether the city may accept the gift of the entire ownership of the Weeki Wachee, L.L.C., without violating Article VII, section 10, of the Florida Constitution, and if so, whether the city must dissolve the limited liability company. The Southwest Florida Water Management District has also submitted material regarding this transaction for consideration by this office.

According to your letter, the Weeki Wachee Springs, L.L.C. (company) was the sole owner of the business and personal property of the Weeki Wachee Springs tourist attraction and water park (attraction) located within the City of Weeki Wachee's municipal limits. The land on which the attraction and water park is located, however, is owned by the Southwest Florida Water Management District (district). You state that one-hundred percent of the ownership interest in the company has been donated to the city. A question has been raised, however, as to the legality of this transaction.

The city has already accepted ownership of the company. This office has previously stated that it must presume the validity of action that has already been taken by a governmental body until declared otherwise by a court of competent jurisdiction in an appropriate judicial proceeding.[1]

However, this office must note that based upon the information provided by the city and by the district, significant questions are raised regarding the city's actions and its potential liability by accepting ownership of the company and by the company's continued existence.

It is this office's opinion that substantial issues exist regarding the donation of the company to the city. Such issues can only be resolved by a determination of a number of questions of fact which appear to be in dispute. Such a resolution would more properly be addressed in an appropriate judicial proceeding.[2]

For example, section 112.3143(3)(a), Florida Statutes, prohibits municipal officers from voting on any measure which inures to his or her special private gain or loss or which inures to the special private gain or loss of a relative or business associate of the officer. In the instant matter, the mayor and city commissioners apparently also serve as officers and employees of the company or are related to an individual who is employed by the company. The district has also advised this office that city officials are purportedly residing on company property rent free. A question therefore arises regarding the validity of the vote of the city commissioners.

While the courts and this office have recognized that the constitutional prohibition in Article VII, section 10, Florida Constitution, against public entities becoming joint owners with or stockholders of any corporation, association, or partnership is not violated by the acquisition of all the stock in a company, such cases have involved situations in which none of the liability of the corporation was assumed by the governmental entity and the corporation was dissolved.[3]

In the instant inquiry, the city purports to have acquired all of the stock of the company yet states that the city is not liable on any matter associated with the company. The company, however, which has not been dissolved, has not been relieved of its obligations.[4] Substantial questions, therefore, exist as to the liabilities and assets of the company and of the potential liability of the city for this city-owned property. This office has no information as to the extent of the company's obligations or the value of its assets and therefore cannot assess the fiscal impact resulting from the city's acceptance of the attraction. Nor has this office been provided with information that revenues generated by the company will be sufficient to sustain its continued operation of the attraction, including fulfilling its obligations, without requiring the use of the ad valorem taxing power.

Article VII, section 10, Florida Constitution, prohibits a municipality from lending or using its taxing power or credit to aid any private individual or enterprise. While the city maintains that it has assumed no liability of the company, the question has been raised as to whether the donation agreement actually effects this result.

This office has recognized that taking back a mortgage by a municipality does not constitute a loan or pledge of the public credit within the meaning of Article VII, section 10, Florida Constitution, since the municipality is not directly or contingently liable to pay something to someone and the municipal property is not placed in jeopardy by a default.[5] While you state that the city is not responsible under the terms of the donation agreement for the liability of the company, the company now is wholly owned by the city and its assets, as municipal assets, may be placed in jeopardy.

Accordingly, I am of the opinion that the issues raised by your request and the district's memorandum of law should be addressed in an appropriate judicial proceeding.

Sincerely,

Charlie Crist
Attorney General

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[1] *See, e.g.,* Ops. Att'y Gen. Fla. 93-06 (1993), 78-64 (1978) and 77-99 (1977). *And see* this office's statement concerning Attorney General Opinions, available on this office's website at: www.myfloridalegal.com, stating this office may decline to issue an opinion where "the official or agency has already acted and seeks to justify the action." *Cf. Pickerill v. Schott*, 55 So. 2d 716, 719 (Fla. 1951) (duty of Beverage Director to observe the law as he found it until in a proper

proceeding its constitutionality is judicially passed upon).

[2] Attorney General Opinions address question of law, not questions of fact or mixed questions of law and fact. *See* this office's statement concerning Attorney General Opinions, *supra*.

[3] *See, e.g.*, *State v. Dade County*, 142 So. 2d 79 (Fla. 1962) (under agreement in which county would purchase all of the common stock of the transportation companies free and clear of all encumbrances and then promptly dissolve the corporations, with the county becoming the owner of the transportation systems and all of their physical properties did not violate Art. VII, s. 10, Fla. Const.); *Brautigam v. White*, 64 So. 2d 781 (Fla. 1953), (lower court ruling that county could acquire the property of not for profit corporation by purchasing participating ownership certificates, which were deemed to be mere stock certificates evidencing shares of the capital stock of the corporation, and dissolve the corporation, thus vesting title in the corporation's lands in the county, affirmed). *And see* Op. Att'y Gen. Fla. 98-20 (1998) (water management district could purchase all of the assets of a corporation by buying all of the outstanding stock of the corporation where district intended to dissolve the corporation and assumed none of the corporation's liabilities).

[4] The city states that it intends to change the limited liability company into a not-for-profit corporation which would operate the attraction.

[5] *See, e.g.,* Ops. Att'y Gen. Fla. 82-42 (1982) and 92-71 (1992).