

Fire control district, effect of annexation

Number: INFORMAL

Date: November 13, 2002

The Honorable Gus M. Bilirakis
Representative, District 48
31608 U.S. Highway 19 North
Palm Harbor, Florida 34684

RE: SPECIAL DISTRICT–FIRE CONTROL DISTRICTS–
MUNICIPALITIES–ANNEXATION–authority of fire control district to continue to provide services after annexation of property into city. Ch. 00-426, Laws of Florida; Ch. 00-477, Laws of Florida, Ch. 02-352, Laws of Florida; s. 171.093, Fla. Stat.

Dear Representative Bilirakis:

You ask whether Chapter 02-352, Laws of Florida, which authorizes the Lealman Special Fire Control District to receive, until 2008, fire service taxes for services to lands that have been annexed by another municipality or taxing authority, is applicable to the East Lake Tarpon Fire District. Upon further communication with your office, you also ask whether section 171.093, Florida Statutes, applies to the East Lake Tarpon Special Fire Control District.

Initially, I would note that the provisions of the East Lake Tarpon Special Fire Control District's enabling legislation are similar to those of the Lealman Special Fire Control District. Both districts were created in 2000, the same year section 171.093, Florida Statutes, was enacted. Thus, any conflict that existed between the enabling legislation for the Lealman Special Fire Control District and section 171.093, Florida Statutes, which led to the adoption of Chapter 02-396, Laws of Florida, would also appear to exist for the East Lake Tarpon Special Fire Control District.

The Lealman Fire Control District was created by special act as an independent special district for the purpose of providing fire prevention services pursuant to Chapter 191, Florida Statutes within the district's boundaries.[1] As originally enacted, chapter 00-426, Laws of Florida, provided that any lands that hereafter became annexed to a municipality "shall be excluded from the District effective the next January 1" following the annexation and that the annexed area "shall be treated as within the corporate boundaries of the annexing municipality and shall not be subject to a levy of the ad valorem tax which is authorized by this Act." [2]

The district's enabling legislation was amended in 2002 by Chapter 02-352, Laws of Florida.[3] Section 1 of Chapter 02-352 authorizes the district to continue to provide services pursuant to section 11 of the district's enabling legislation even though an area has been annexed into a municipality. Section 11, as amended by section 2, Chapter 02-352, *supra*, states:

"Notwithstanding chapter 171, Florida Statutes, or other applicable law or ordinance, if any municipality or other fire control district annexes land within the District, the District shall continue as the sole taxing, enforcing, and service-providing authority for District purposes in the annexed

land. However, any municipality or other fire control district that annexes such land may collect the applicable assessment or tax for fire services and pay the District for such services at the District's annually adopted standard rate."

Chapter 02-352, Laws of Florida, however, limits the above grant of authority to the District by removing, effective January 1, 2008, the district's authority to continue to provide services to the annexed property and to levy ad valorem taxes on such property.[4]

Nothing in Chapter 02-352, Laws of Florida, indicates its applicability to any other fire district such as the East Lake Tarpon Special Fire Control District, an independent special district also created by special act.[5] Accordingly, it does not appear that the East Lake Tarpon Special Fire Control District would be authorized to utilize the provisions of Chapter 02-352 to continue to provide services to property that has been annexed into a municipality.

You also inquire about the applicability of section 171.093, Florida Statutes. The statute was enacted to

"provide an orderly transition of special district service responsibilities in an annexed area from an independent special district which levies ad valorem taxes to a municipality following the municipality's annexation of property located within the jurisdictional boundaries of an independent special district, if the municipality elects to assume such responsibilities."[6]

Section 171.093(2), Florida Statutes, provides that the annexing municipality may elect to assume the special district's service responsibilities within the annexed area.

If the municipality elects not to assume such duties, section 171.093(5), Florida Statutes, states that the district shall remain the service provider in the annexed area and the district's geographical boundaries shall continue to include the annexed area. The district may continue to levy ad valorem taxes and assessments on the real property located within the annexed area. This would appear to conflict with Chapter 00-477, Laws of Florida, the enabling legislation for the East Lake Tarpon Special Fire Control District, which excludes any lands annexed by a municipality from the district's boundaries and provides that such lands are not subject to a levy of ad valorem taxes.[7]

If the municipality elects to assume the district's responsibilities, section 171.093, Florida Statutes, contemplates that the municipality and the district will enter into an interlocal agreement addressing the orderly transfer of service responsibilities.[8] The statute provides that the district's boundaries would contract to exclude the annexed area at the time and in the manner prescribed in the interlocal agreement.[9]

If, however, the municipality and the district are unable to reach an agreement, section 171.093(4)(a), Florida Statutes, states that

"effective October 1 of the calendar year immediately following the calendar year in which the municipality declares its intent to assume service responsibilities in the annexed area, the district shall remain the service provider in the annexed area for a period of 4 years. During the 4-year period, the municipality shall pay the district an amount equal to the ad valorem taxes or

assessments that would have been collected had the property remained in the district."

While the district continues to provide services during this 4-year period, the geographical boundaries of the district no longer include the annexed area.[10] Section 171.093(6), Florida Statutes, however, prohibits the district from levying ad valorem taxes or assessments on the annexed property in the calendar year in which its boundaries contract and subsequent years although the statute provides that nothing in this section precludes the contraction of the district's boundary by special act.[11]

Thus, viewing the statute as a whole, it appears that section 171.093, Florida Statutes, authorizes a municipality to assume a special taxing district's responsibilities in accordance with the interlocal agreement or if there is no agreement, at the end of the 4-year period plus any extension mutually agreed upon.[12]

The East Lake Tarpon Special Fire Control District, is an independent special district with the authority to levy ad valorem taxes,[13] and therefore would appear to be subject to the provisions of section 171.093, Florida Statutes. However, like the Lealman Special Fire Control District, the East Lake Tarpon Special Fire Control District's enabling legislation provides that after the annexation of property within the district by a municipality, the annexed property is excluded from the district's boundaries, effective the next January 1 following such annexation and the annexed area is not subject to the levy of the ad valorem tax authorized by the special act.

Thus, as set forth above, there would appear to be some conflict between section 171.093, Florida Statutes, and the district's enabling legislation, both of which were adopted during the 2000 legislative session.

Under the general rules of statutory construction, a special act will take precedence over a general law dealing with the same subject matter; this general rule especially holds true when both laws are passed during the same legislative session.[14] In light of the controversy that has arisen regarding this matter, the Legislature may wish to reexamine this issue to clarify its intent as to whether section 171.093, Florida Statutes, controls over any conflicting provision of a special act.

I trust that the above informal advisory comments may be of assistance to you and the district in resolving this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] See Ch. 00-426, Laws of Florida.

[2] See ss. 3(2) and 11 of the district's enabling legislation, s. 1, Ch. 00-426, Laws of Florida.

[3] See the title to Ch. 02-352, Laws of Florida, stating that it is "[a]n act relating to the Lealman Special Fire Control District[.]"

[4] See ss. 3 and 4, Ch. 02-352, Laws of Florida.

[5] See Ch. 00-477, Laws of Florida, which created the East Lake Tarpon Special Fire Control District as a special district authorized to provide fire prevention services within the district's boundaries.

[6] Section 171.093(1), Fla. Stat.

[7] See ss. 3(2) and 11 of the district's enabling legislation, s. 1, Ch. 00-477, Laws of Florida.

[8] Section 171.093(3), Fla. Stat.

[9] Section 171.093(5), Fla. Stat.

[10] See s. 171.093(6), Fla. Stat., stating that "the geographical boundaries of the district shall contract to exclude the annexed area on the effective date of the beginning of the 4-year period provided for in subsection (4)."

[11] Pursuant to s. 171.093(6), Fla. Stat., the boundaries contract on the effective date of the beginning of the 4-year period provided in s. 171.093(4), Fla. Stat., *i.e.*, on October 1 of the calendar year following the calendar year in which the municipality declared its intent to assume responsibility for the district's services in the annexed area.

[12] See, *e.g.*, the language of s. 171.093(4)(a), Fla. Stat., which refers to the municipality declaring its *intent to take over* the district's responsibilities and the district remaining the service provider in the annexed area for a period of 4 years. *And see*, *State v. Rodriguez*, 365 So. 2d 157 (Fla. 1978) (entire statute must be considered in determining legislative intent and effect must be given to every part of the section and every part of the statute as a whole); *T.R. v. State*, 677 So. 2d 270 (Fla. 1996) (all parts of a statute must be read together in order to achieve a consistent whole).

[13] See s. 8, of the district's enabling legislation, s. 1, Ch. 00-477, Laws of Florida.

[14] See, *e.g.*, *J.M. v. State*, 783 So. 2d 1204 (Fla. 1st DCA 2001).