

Mobile Home Recreation District, purchases

Number: INFORMAL

Date: August 16, 2000

Mr. Bruce Bolon
Chairman, Barefoot Bay Recreation District
625 Barefoot Boulevard, Building F
Barefoot Bay, Florida 32976

Dear Mr. Bolon:

On behalf of the Board of Trustees of the Barefoot Bay Recreation District (district), you ask whether the replacement of a sprinkler system for the golf course owned and operated by the district may be classified as maintenance of the recreational facilities. According to your letter, the existing sprinkler system has in recent years been slowly deteriorating, and the district has now been advised that a new system, which will cost in excess of \$300,000, must be purchased in order to adequately maintain the golf course grounds. Attorney General Butterworth has asked me to respond to your letter.

You state that the district was created pursuant to Part II, Chapter 418, Florida Statutes.[1] Section 418.304(3), Florida Statutes, authorizes the board of trustees of the district:

"To acquire, purchase, construct, improve, equip, and maintain streets and lights, recreational facilities, and other common areas of all types, including real property and personal property, within the boundaries of the existing platted mobile home park to be acquired by the district; such acquisition may be by purchase, lease, or gift."

The district may operate and maintain recreational facilities or enter into agreements with others for such operation and maintenance.[2] In addition, the district may "issue bonds or notes to finance, in whole or in part, the cost of construction, acquisition, or improvement of common real property and personal property of the district." [3]

Subsection (13) of section 418.304, Florida Statutes, however, provides that the board of trustees is authorized:

"To enter into contracts involving the purchase, lease, conveyance, or other manner of acquisition of common real or tangible personal property; however, in any instance when the cost, price, or consideration therefor exceeds \$25,000, including all obligations proposed to be assumed in connection with such acquisition, then only if:

- (a) The trustees by a two-thirds vote have approved the terms and conditions of such acquisition by written resolution;
- (b) Within not less than 30 days nor more than 60 days after the date of the resolution, the trustees certify the resolution to the supervisor of elections for the county for a referendum election; and
- (c) The resolution is approved by a majority vote of the qualified electors voting in a referendum

called for the purpose of considering the resolution."

Thus, while the board of trustees of the district is authorized to construct, improve, equip and maintain recreational facilities, it is also required to hold a referendum when such actions involve the purchase of common real property or tangible personal property in excess of \$25,000. Classifying the replacement of a sprinkler system as "maintenance"[4] does not remove the board's actions from the requirement of section 418.304(13), Florida Statutes. If the board is purchasing tangible personal property which costs more than \$25,000, regardless of whether for maintenance, improvement or construction of the district's recreational facilities, the provisions of section 418.304(13), Florida Statutes, must be complied with by the board.[5] The purpose of this subsection, which seeks to ensure that the electorate of the district has a voice in major acquisitions of common real property or tangible personal property, should not be frustrated.

I trust that the above informal advisory comments may be of assistance to the board of trustees in resolving this issue.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk

[1] See s. 418.30, Fla. Stat., authorizing any municipality or county in the state to create one or more mobile home park recreation districts by ordinance approved by a vote of the electors residing in the proposed district. *And* see Brevard County Ordinance 84-05, which you have advised this office establishes the Barefoot Bay Recreation District.

[2] Section 418.304(6), Fla. Stat.

[3] Section 418.304(5), Fla. Stat.

[4] See, e.g., Black's Law Dictionary *Maintain* p. 1105 (rev. 4th ed. 1968) (maintain has been variously defined as acts of repairs and other acts to prevent a decline, lapse, or cessation from existing state or condition).

[5] *Cf.* s. 192.001(11)(d), Fla. Stat., defining "Tangible personal property" for purposes of the state tax code to mean:

"all goods, chattels, and other articles of value (but does not include the vehicular items enumerated in s. 1(b), Art. VII of the State Constitution and elsewhere defined) capable of manual possession and whose chief value is intrinsic to the article itself[.]"