

Municipal Service Taxing Unit, bonds

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The Honorable George A. Crady
Representative, District 12
823 U.S. Highway 17
Yulee, Florida 32097

Dear Representative Crady:

This is in response to your letter requesting assistance on behalf of Mr. Phillip B. Caldwell who questions whether Article VII, section 12, of the Florida Constitution requires a referendum when a county forms a municipal service benefit unit under section 125.01(1)(q), Florida Statutes, and funds such unit with a 10-year bond.

Section 125.01(1)(q), Florida Statutes, recognizes the authority of a county to establish municipal service taxing or benefit units (MSBU) for any part or all of the unincorporated area of the county to provide, among several services, fire protection, law enforcement, beach erosion control, recreation service and facilities, water, streets, sidewalks, street lighting, garbage and trash collection, and other essential facilities and municipal services from funds derived from service charges, special assessments, or taxes within such unit only. Counties are additionally authorized to:

"Levy and collect taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit, and special assessments; borrow and expend money; and *issue bonds*, revenue certificates, and other obligations of indebtedness, which power shall be exercised in such manner, and subject to such limitations, as may be provided by general law. There shall be *no referendum required* for the levy by a county of ad valorem taxes, both for county purposes and for the providing of municipal services within any municipal service taxing unit." [1] (e.s.)

The statute clearly grants counties the authority to levy taxes to fund a municipal service taxing unit without referendum approval. However, the authority to levy special assessments, borrow and expend money, and issue bonds, revenue certificates and other obligations of indebtedness must be exercised in compliance with general law.

Article VII, section 12, Florida Constitution, states:

"Local bonds.--Counties, school districts, municipalities, special districts and local governmental bodies with taxing powers may issue bonds, certificates of indebtedness or any form of tax anticipation certificates, payable from ad valorem taxation and maturing more than twelve months after issuance only:

(a) to finance or refinance capital projects authorized by law and only when approved by vote of

the electors who are owners of freeholds therein not wholly exempt from taxation; or
(b) to refund outstanding bonds and interest and redemption premium thereon at a lower net average interest cost rate."

The plain language of this constitutional requirement for referendum approval makes it applicable only to bonds which are backed by ad valorem taxes and to be paid off in more than one year.[2] If bonds or certificates of indebtedness do not pledge ad valorem taxes, there is no requirement that an approving referendum be held.[3] The mere possibility that a taxing authority may have to expend general revenue to meet the bond obligations does not render the bonds payable from ad valorem taxes and require referendum approval.[4]

This office has been advised that the bonds issued by the county to fund the MSBU are backed by a special assessment, not ad valorem taxes. Pursuant to the constitutional provision cited above, therefore, the bonds backed by a special assessment do not require referendum approval.

I trust these informal comments will provide guidance in resolving the question that has been raised.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Section 125.01(1)(r), Fla. Stat.

[2] See *Speer v. Olson*, 367 So. 2d 207 (Fla. 1978) (bonds proposed to be issued by county pledged both net revenues to be derived from operation of combined water and sewer system and ad valorem taxes to be levied and collected in area of county municipal service taxing unit, made it necessary to hold a bond election as part of authorization for their issuance); *County of Volusia v. State*, 417 So. 2d 968 (1982) (county's pledge of all legally available, unencumbered revenues of county other than ad valorem taxation, along with covenant to do all things necessary to continue receiving the revenues, as security for bonds for construction of jail would have had effect of requiring increased ad valorem taxation so that a referendum would be required).

[3] See *State v. Orange County*, 281 So. 2d 310 (Fla. 1973) (county revenue bonds and certificates of indebtedness which do not pledge ad valorem taxes do not require an approving election); *Jacksonville Shipyards, Inc. v. Jacksonville Electric Authority*, 419 So. 2d 1092 (Fla. 1982) (constitutional bond requirement was inapplicable to bonds which were not payable from ad valorem taxation).

[4] See *DeSha v. City of Waldo*, 444 So. 2d 16 (Fla. 1984) (possibility that city might at some time in the future choose to expend general revenue to meet its bond obligations did not render bonds payable from ad valorem taxation).