

Special districts, lease of drainage district property

Number: INFORMAL

Date: March 03, 1998

Mr. Douglas R. Bell
Attorney for the South Broward Drainage District
Cumberland Building, Suite 601
800 East Broward Boulevard
Fort Lauderdale, Florida 33301

RE: SPECIAL DISTRICTS--DRAINAGE AND WATER CONTROL DISTRICTS--REAL PROPERTY--LEASING--drainage control district's authority to lease real property to other entity for non-district purpose. s. 298.22., Fla. Stat.

Dear Mr. Bell:

On behalf of the South Broward Drainage District, you ask whether the district may lease real property to Southwest Broward Volunteer Fire and Rescue or to any other individual or entity. If so, the question arises whether the lease may be negotiated or whether it must be competitively bid.

In sum, the South Broward Drainage District may lease district property to Southwest Broward Volunteer Fire and Rescue or to any other entity, if the district makes the appropriate legislative finding that the leasing of such property serves to carry out the purpose for which the district was created. Moreover, absent a requirement in the district's enabling legislation that transactions involving the transfer or lease of real property be competitively bid, it does not appear that the South Broward Drainage District would have to use competitive bidding in leasing property to Southwest Broward Volunteer Fire and Rescue.

The South Broward Drainage District (district) owns a vacant lot adjacent to a drainage pump station owned and maintained by the district. Southwest Broward Volunteer Fire and Rescue wishes to enter into a long-term lease with the district in order to construct and operate a Fire/Rescue and Medical Service facility on the property.

The district, created by Chapter 67-904, Laws of Florida, as the Hollywood Reclamation District, and subsequently renamed,[1] has the authority to

"contract and be contracted with; to sue and be sued in the name of the district; to adopt and use a seal; to acquire by purchase, gift, devise, condemnation, eminent domain, or otherwise, property, real or personal, or any estate therein, within or without the district, to be used for any purpose necessary or to meet the needs of any of the purposes of this act." [2]

The district may also "build and construct any other works and improvements deemed necessary to preserve and maintain the works in or out of the district" [3] Moreover, the district is authorized to "cooperate with or contract with other drainage districts or *other governmental*

agencies as may be necessary, convenient, incidental or proper in connection with any of the powers, duties or purposes of the district as stated in this act."[4] (e.s.) This would allow the district to contract with other governmental agencies, such as in the leasing of property, if the contract is properly related to the powers, duties or purposes of the district.

Under Chapter 298, Florida Statutes, the board of supervisors of the district has the authority to "build and construct any other works and improvements deemed necessary to preserve and maintain the works in or out of said district. . . ."[5] The board may also "acquire, construct, operate, maintain, use, sell, convey, transfer or otherwise provide for pumping stations, including pumping machinery, motive equipment, electric lines and all appurtenant or auxiliary machines, devices or equipment."[6] Moreover, the board is authorized to contract for the sale, conveyance and transfer of the pumping stations, machinery, motive equipment, electric lines and appurtenant equipment.[7]

Relative to powers concerning land, the board may

"hold, control and acquire by donation, purchase or condemnation, any easement, reservation or dedication in or out of the district, for any of the purposes herein provided. To condemn or acquire, by purchase or grant or by exercise of the right of eminent domain, for use in the district, any land or property within or without the district and acquire or condemn any other property within or without the district. . . ."[8]

A statutorily created entity such as the district has only such power and authority as is expressly granted by law or necessarily implied therefrom in order to carry out an expressly granted power.[9] Moreover, any reasonable doubt as to the existence of a particular administrative power should be resolved against its exercise.[10]

In this instance, the district clearly has the authority to own property and to enter into contracts with other governmental agencies in order to carry out the purposes of the district. While the enumerated powers of the district do not include providing fire and rescue services, the decision as to whether the leasing of district property to another entity would further the purpose of the district, is one that would have to be made by the district's governing board and not by this office.

It is the general rule with regard to competitive bidding by public agencies that, in the absence of any legislative requirements regarding the method of awarding public contracts, public officers may exercise reasonable discretion and a contract may be made by using any practicable method that safeguards the public interest.[11]

Absent a requirement in the district's enabling legislation that transactions involving the transfer or lease of real property be competitively bid, it does not appear that the South Broward Drainage District would have to use competitive bidding in leasing property to Southwest Broward Volunteer Fire and Rescue.

Sincerely,

Robert A. Butterworth
Attorney General

[1] Section 1, Ch. 86-362, Laws of Florida.

[2] Section 13(1), Ch. 67-904, Laws of Florida.

[3] Section 13(7), Ch. 67-904, Laws of Florida.

[4] Section 13(14), Ch. 67-904, Laws of Florida.

[5] Section 298.22(3), Fla. Stat.

[6] *Id.*

[7] Section 298.22(4), Fla. Stat.

[8] Section 13(9), Ch. 67-904, Laws of Florida. *See also* s. 298.22(6) and (7), Fla. Stat., authorizing the board to hold, control and acquire land for any of the purposes herein provided and authorizing condemnation of land or property for the use of the district.

[9] *See Forbes Pioneer Boat Line v. Board of Commissioners of Everglades Drainage District*, 82 So. 346 (Fla. 1919); Ops. Att'y Gen. Fla. 87-39 (1987), 86-90 (1986), and 85-65 (1985).

[10] *See Edgerton v. International Company*, 89 So. 2d 488 (Fla. 1956); *State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So. 2d 628 (Fla. 1st DCA 1974), *cert. dismissed*, 300 So. 2d 900 (Fla. 1974).

[11] *See* Ops. Att'y Gen. Fla. 93-28 and 93-83 (1993) and the cases cited therein.