Schools, impact or service availability fees

Number: INFORMAL

Date: August 18, 1997

Mr. Joe A. McClain
School Board Attorney
District School Board of Pasco County
Post Office Box 4
Dade City, Florida 33526

RE: SCHOOLS--IMPACT FEES--COUNTIES--authority of county to impose impact or service availability fees on school district property. s. 235.26(1), Fla. Stat.

Dear Mr. McClain:

This is in response to your recent letter for assistance in determining whether the district school board is required to pay a utility impact fee or service availability fee to the county as a result of the Comprehensive Planning and Land Development Regulation Act.

You state that the county cites to sections 163.3180 and 235.193, Florida Statutes, as authority for collecting the fee, while the school board depends upon section 235.26(1), Florida Statutes, to claim its exemption from such fees.

In a recent informal response addressing the imposition of sewer connection fees on school board property, this office discussed Attorney General Opinion 90-47, in which the City of Orlando attempted to impose stormwater fees on state-owned property within the city.[1] The stormwater fees were assessed against all property regardless of its use, based on the property having received a particular benefit from the stormwater system. This office concluded that the fees were special assessments which, in the absence of legislation subjecting the state to liability, could not be assessed against state property. The opinion further noted, however, that if the charges were service charges, the state could be held liable for the services it uses.

This office has stated that school property that is used for educational purposes is exempt from taxation and special assessments.[2] However, as pointed out in Attorney General Opinion 91-27, there is no analogous exemption for school districts from service charges or fees for the use of utilities and service. To the extent that a school board uses a utility or service, therefore, charges may be imposed.

Section 235.26(1), Florida Statutes, provides in pertinent part:

"(a) Except as otherwise provided in paragraph (b), all public educational and ancillary plants constructed by a district school board or a community college district board of trustees shall conform to the State Uniform Building Code for Public Educational Facilities Construction, and *such plants are exempt from all* other state, county, district, municipal, or local building codes, interpretations, building permits, and assessments of fees for building permits, ordinances, road

closures, and *impact fees or service availability fees.*"[3] (e.s.)

"Impact or service availability fees" have been defined to mean:

"A fee, tax, user charge or assessment imposed by a municipality or other governmental agency for:

(a) The privilege of connecting to a system for which there is no immediate specific requirement for a capital improvement, expansion or installation at the utility source necessitated by the connection; or
(b) An assessment imposed on board-owned property for the installation of a contiguous utility line except for that length and size of line actually needed to service the educational or ancillary plant on that site; or
(c) For an intangible service which is not clearly established at a cost."[4]

These provisions were considered in *Loxahatchee River Environmental Control District v. School Board of Palm Beach County,*[5] in determining whether a service availability standby charge could be imposed by the county on the school district. It was concluded that the charge was an impact or service availability fee which the district was not required to pay, since its payment would only entitle the school district to tie into the system and was not for present services or present use of the facility.

In a subsequent case the Fifth District Court of Appeal considered whether a connection fee imposed by the county was an impact or service availability fee.[6] Relying on section 235.26, Florida Statutes, and the above-cited definition of impact or service availability fees, the court found that the connection fee was an impact or service availability fee from which the school district was exempt.

Thus, a utility impact fee or service availability fee that falls within the definition of an impact fee or service availability fee may not be imposed on the school district. If, however, the fee is imposed based upon a specific requirement for capital improvement, expansion, or installation at the utility source as a result of the school board's connection to the utility, such a fee is proper.[7]

In this instance, there is insufficient information regarding the utility impact fee or service availability fee to make any conclusory statements. However, I trust that the informal com-ments made above will be of assistance in making a determination.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Inf. Op. to The Honorable Walter "Skip" Campbell, dated August 8, 1997.

[2] Attorney General Opinion 91-27 (1991).

[3] *See* Op. Att'y Gen. Fla. 84-11 (1984), stating that s. 235.26(1), Fla. Stat., exempts all educational facilities constructed by district school boards from all state, county, district or municipal impact fees or service availability fees.

[4] Former Rule 6A-2.01(45), Fla. Admin. Code, which was repealed in 1994. The requirements for educational facilities are now set forth in the Department of Education publication titled "State Requirements for Educational Facilities." Section 1.2(46) of the publication defines "Impact or Service Availability Fees" as:

"A fee, user charge, or assessment imposed by a municipality or other governmental entity for: the privilege of connecting to a system for which there is no immediate specific requirement for a capital improvement, expansion, or installation at the utility source necessitated by the connections; or an assessment imposed on board-owned property for the installation of a contiguous utility line; or an intangible service which does not have a clearly established cost."

[5] 496 So. 2d 930 (Fla. 4th DCA 1986), *approved,* 515 So. 2d 217 (Fla. 1987).

[6] *See Hernando County Water and Sewer District v. Hernando County Board of Public Instruction,* 610 So. 2d 6 (Fla. 5th DCA 1992), *review denied,* 624 So. 2d 266 (Fla. 1993).

[7] *Cf.* s. 235.34(1), Fla. Stat., providing that subject to the exemption from the assessment of fees in section 235.26(1), Fla. Stat., school boards may expend funds for sanitary sewer, water, stormwater, and utility improvements upon, or contiguous to, any existing or proposed educational plant.