Schools, payment of sewer connection fees

Number: INFORMAL

Date: August 18, 1997

The Honorable Walter "Skip" Campbell
Senator, District 33
10094 McNab Road
Tamarac, Florida 33321

RE: SCHOOLS--MUNICIPALITIES--UTILITIES--imposition of sewer connection fee on school district. s. 235.26(1), Fla. Stat.

Dear Senator Campbell:

According to your letter, a constituent has questioned whether the Broward County School Board has been properly paying sewer connection fees to municipalities. You refer to Attorney General Opinion 90-47 and section 235.26, Florida Statutes.

In Attorney General Opinion 90-47, this office considered whether the stormwater fees imposed by the City of Orlando under section 403.0893(1), Florida Statutes, could be charged against property owned within the city. The fees were imposed on property regardless of use, and were based on the property having received some particular benefit from the stormwater system. Section 193.363, Florida Statutes, was used by the city as a rationale to justify collection of the fee. These factors led this office to the conclusion that the fees were special assessments which, in the absence of legislation subjecting the state to liability, could not be assessed against state property.

It was noted in Attorney General Opinion 90-47, however, that if the charges were service charges, the state could be held liable. While state property used for public purposes is not generally subject to tax or special assessment, the state may be liable for the services it uses.

Similarly, this office stated in Attorney General Opinion 91-27 that property owned by school districts which is used for educational purposes is exempt from taxation and special assessments. However, there is no analogous exemption for school districts from service charges or fees for the use of utilities and like services. To the extent that a school board uses a service, charges may be imposed. This office, therefore, concluded that the city could impose stormwater utility user fees upon a school board based upon the board's use of the system.

Section 235.26(1), Florida Statutes, in establishing a State Uniform Building Code for Public Educational Facilities Construction, 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."*[1] (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."[2]

The above provisions were considered by the court in *Loxahatchee River Environmental Control District v. School Board of Palm Beach County*,[3] in determining whether a service availability standby charge could be imposed on the school district. The court concluded that the charge, which once paid entitled the school board to tie into the system, and which was not for present services or present use of the facilities, was in the nature of an impact or service availability fee from which the school board was exempt.

Subsequently, the Fifth District Court of Appeal in *Hernando County Water and Sewer District v. Hernando County Board of Public Instruction*,[4] considered whether the connection fee sought by the county was an impact or service availability fee. Relying, as did the *Loxahatchee* court, on section 235.26, Florida Statutes, and the above definition of impact and service availability fees, the court held that the connection fee was in fact an impact or service availability fee. The court found that the fee allowed the school board the right to make the actual physical connection to the water system. There was, however, no need for any specific capital expenditure to accommodate the school district's water and sewer needs since the school district's lines already met the county's lines.

Accordingly, a city may not impose a sewer connection fee on a school board that falls within the definition of an impact or service availability fee as discussed above. However, if the fee is imposed based upon a specific requirement for a capital improvement, expansion or installation at the utility source required by the school board's connection to the utility, such a fee is proper. Similarly, if the fee is an assessment imposed on school board property for installation of a contiguous sewer line, the school board would be responsible for that portion of the line actually needed to service the educational facility on that site.[5]

I trust that the above informal comments may be of assistance.

Sincerely,

Robert A. Butterworth
Attorney General

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[1] *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.

[2] Former Rule 6A-2.01(45), Fla. Admin. Code. The rule 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." *See* Rule 6A-2.0111, Fla. Admin. Code. 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."

[3] 496 So. 2d 930 (Fla. 4th DCA 1986), *approved*, 515 So. 2d 217 (Fla. 1987).

[4] 610 So. 2d 6 (Fla. 5th DCA 1992), *review denied*, 624 So. 2d 266 (Fla. 1993).

[5] *Cf.* s. 235.34(1), Fla. Stat., providing that subject to the exemption from the assessment of fees in s. 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.