

Taxation, charter county's authority

Number: INFORMAL

Date: March 06, 1997

Ms. Martha O. Haynie
Orange County Comptroller
Post Office Box 38
Orlando, Florida 32802-0038

RE: CHARTER--COUNTIES--TAXATION--charter county's authority to impose and collect taxes.

Dear Ms. Haynie:

You ask whether Orange County may under its home rule powers amend its public service tax ordinance to include enforcement and collection tools available for other taxes in Chapters 212 and 213, Florida Statutes. You do not, however, indicate which "enforcement and collection tools" the county wishes to use. Accordingly, the comments expressed herein must be general in nature.[1]

As you note in your letter, Orange County as a charter county possesses "all powers of local self-government not inconsistent with general law, or with special law approved by vote of the electors." [2] This office, however, has previously stated that based upon the provisions of Article VII, sections (1)(a) and (9)(a), Florida Constitution, a county or municipality has no home rule powers with respect to the levy of excise or non-ad valorem taxes and exemptions therefrom, as all such taxing power must be authorized by general law.[3]

Article VII, section 1(a), Florida Constitution provides:

"No tax shall be levied except in pursuance of law. No state ad valorem taxes shall be levied upon real estate or tangible personal property. All other forms of taxation shall be preempted to the state except as provided by general law."

Article VII, section 9(a), Florida Constitution, similarly limits the taxing authority of municipalities and counties:

"Counties, school districts, and municipalities shall, and special districts may, be authorized by law to levy ad valorem taxes and may be authorized by general law to levy other taxes, for their respective purposes, except ad valorem taxes on intangible personal property and taxes prohibited by this constitution."

You refer to the decision of the Supreme Court of Florida in *McLeod v. Orange County*[4] as providing a basis for a charter county to exercise home rule powers in the area of taxation.

The *McLeod* Court, however, only held that as a charter county, Orange County could impose any tax that a municipality was authorized to impose provided that the tax was in the area of the

county's tax jurisdiction.

In reaching such a conclusion, the Court relied on its earlier decision in *State ex rel. Volusia County v. Dickinson*[5] in which it stated that when Article VIII, section 1(g), and Article VII, section 9(a), Florida Constitution, are read together, it is clear that "charter counties and municipalities are placed in the same category for all practical purposes. That upon a county becoming a charter county it automatically becomes a metropolitan entity for self-government purposes."

The *McLeod* Court, however, did not hold that a charter county could impose a tax not provided for by law. Rather it stated that where a statute authorized municipalities to tax, a charter county as a metropolitan entity for self-government purposes could also impose such a tax so long as it was within the county's taxing jurisdiction. Since section 166.231, Florida Statutes, authorized a municipality to levy a public service tax and since such a tax was within the county's taxing jurisdiction, the county could also impose such a tax.

The exercise of the power of taxation consists of two distinct processes--the levying or imposition of the taxes on persons or property and the collection of the taxes levied.[6] The first consists of those provisions of law which determine the persons or property to be taxed, the sum or sums to be raised, the rate, and the time and manner of levying and receiving and collecting the taxes while the second consists of those provisions of law which prescribe the manner of enforcing the obligation on the part of those taxed to pay the demand thus created.[7] Florida follows the general rule that taxes may be levied, assessed, and collected only in the manner prescribed by statute.[8] Thus both processes must be provided for by law.[9]

I trust the above informal advisory comments may be of assistance to you in this matter.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/tgk
Enclosures

[1] Moreover, your inquiry concerns the amendment of an existing ordinance and thus relates to the authority of the governing body of the county. While you state that you are responsible for the administration of the public service tax, such duties relate to the administration of the existing tax. The authority to amend the tax rests with the legislative body of the county. See s. 16.01(3), Fla. Stat., and this office's Statement Concerning Attorney General Opinions, copies of which are enclosed, stating that this office is authorized to render opinions to public officials on questions relating to their own official duties.

[2] See Art. VIII, s. 1(g), Fla. Const., securing broad home rule powers to charter counties.

[3] See, e.g., Ops. Att'y Gen. Fla. 93-35 (1993) (municipality may not in absence of statute provision waive past due public service taxes); 89-11 (1989); 80-87 (1980) and 79-26 (1979).

[4] 645 So. 2d 411 (Fla. 1994).

[5] 269 So. 2d 9 (Fla. 1972).

[6] *Hiers v. Mitchell*, 116 So. 81 (Fla. 1928).

[7] *Id.*

[8] See *Walter E. Heller & Company Southeast, Inc. v. Williams*, 450 So. 2d 521 (Fla. 3d DCA 1984), *review denied*, 462 So. 2d 1108 (Fla. 1984); *State ex rel. Seaboard Air Line R. Co. v. Gay*, 35 So. 2d 403 (Fla. 1948); *Maas Brothers, Inc. v. Dickinson*, 195 So. 2d 193 (Fla. 1967).

[9] See generally 50 Fla. Jur. 2d s. 5:6 stating that statutory authority is required for both the levying of taxes and the collection of taxes. *Cf.* s. 125.0104(10)(c), Fla. Stat. authorizing a county which elects to assume all responsibility for auditing the records and accounts of dealers, and assessing, collecting, and enforcing payments of delinquent taxes, to use any power granted in s. 125.0104, Fla. Stat., to the Department of Revenue to determine the amount of tax, penalties, and interest to be paid by each dealer and to enforce payment of such tax, penalties, and interest.