

Mar 18, 1992

Mr. Neal D. Bowen  
County Attorney  
17 South Vernon Avenue, Room 117  
Kissimmee, Florida 34741

Re: Non-Ad Valorem Assessments; County Expansion of  
Boundaries of an MSBU; Notice of Intent Resolution  
Under Section 197.3632(3)(a), F.S. Not Required  
Section 197.3632, Florida Statutes;  
Rule Chapter 12D-18, F.A.C.  
Petition of Osceola County, dated August 22, 1991  
for Declaratory Statement

Dear Mr. Bowen:

In your petition for declaratory statement you state Osceola County seeks a declaratory statement, and sets forth substantially the following issues. By mutual agreement, Osceola County withdraws its petition for declaratory statement but will accept a letter on these issues.

ISSUE I

Whether amending the assessment scheme of the ordinance so as to specially assess the golf course would constitute a first time assessment pursuant to Florida Statute 197.3632(4)(a)1. even though the county, through an MSBU, has been levying and collecting special assessments annually since 1986. If the answer is in the affirmative, a secondary issue becomes whether the mail notice required by Florida Statute 197.3632(4)(b) may be sent only to the golf course owner or must a notice be sent to each of the owners of the seven thousand lots and parcels subject to special assessment.

ISSUE II

Whether merging the three MSBUs into the BVL MSBU would constitute a "first time levy" and/or "change in local government's boundaries" and/or "a change in the purpose for such assessment or in the use of the revenue generated" within the meaning of Florida Statute 197.3632(4)(a)1., 3. and 4., respectively, thereby triggering the extraordinary procedural requirements of Florida Statute 197.3632(4).

### FACTS

Osceola County seeks a clarification or construction of the applicability of section 197.3632, Florida Statutes and Chapter 12D-18, F.A.C. pertaining to the uniform method for the collection and enforcement of non-ad valorem assessments to particular facts as set forth below.

Osceola County is a political subdivision of the state of Florida governed by the Osceola County Board of County Commissioners. It is a general purpose local government. It is empowered, inter alia, pursuant to section 125.01(1)(q), Florida Statutes, to establish municipal service benefit units to levy special assessments therein for purposes of providing certain municipal services. See AGO 90-75 for a discussion of this statutory authority.

Osceola County has established several such municipal service benefit units and does use them as a mechanism to levy special assessments of the county in them. Prior to Chapter 88-216, Laws of Florida, all such levies were collected on the tax notice pursuant to section 197.363, Florida Statutes. The special assessments are now collected on the tax notice by the uniform method prescribed by section 197.3632, Florida Statutes. All such levies are "existing levies" within the meaning of rule 12D-18.002(2)(d), F.A.C.

In 1985 the county established the Buenaventura Lakes Municipal Service Benefit Unit (BVL MSBU). The county, through the BVL MSBU, has been annually levying and collecting special assessments since 1986. The BVL MSBU has approximately seven thousand (7,000) lots and parcels which are assessed in it on

which various land uses occur. The purposes for which the county uses the special assessments from lands within the BVL MSBU are to maintain the stormwater drainage system (retention ponds and lakes, drainage ways, etc.), street lighting, operation and maintenance of a community building, operation and maintenance of parks and recreational facilities, solid waste disposal, and certain right-of-way maintenance. Lots and parcels are assessed pursuant to the nature and category of their land use which, in turn, determines the approximate value of benefit(s) accruing to the property so assessed. Thus, improved platted residential lots and multi-family units are assessed at a certain rate; unimproved platted residential lots are assessed at another rate; improved platted business, commercial and utility lots at another rate; and unimproved platted commercial, business and utility lots at yet another rate. We make no observation or conclusion whether these benefits to the property are special or whether their payment is reasonably apportioned, the twin tests for constitutional special assessments. See AGO 90-39 for a discussion of the availability of the collection procedures of section 197.3632, Florida Statutes to the use of such an MSBU by the county.

Osceola County states that, if it is required to comply with the extraordinary procedural requirements of section 197.3632(4), Florida Statutes and notice must be mailed to each property owner within the BVL MSBU and the three MSBUs, it would require mailing notices to as many as 7,856 owners of lots or parcels of property within the four municipal service units, plus the extra expense of advertisements and additional public hearing.

#### ANSWER TO ISSUE I

The issue presented is whether amending the assessment scheme by ordinance so as to specially assess the golf course would constitute a first time assessment pursuant to section 197.3632(4)(a)1., Florida Statutes even though the MSBU has been levying and collecting special assessments annually since 1986. If the answer is in the affirmative, a secondary issue becomes whether the mail notice required by section 197.3632(4)(b), Florida Statutes may be sent only to the golf course owner or must a notice be sent to each of the owners of the seven

thousand lots and parcels subject to special assessment.

Osceola County argues that section 197.3632(4)(a)1., Florida Statutes would not be applicable to the amendment of the BVL MSBU so as to trigger the extraordinary procedural requirements of section 197.3632(4)(b), Florida Statutes. The county acknowledges that the assessment on the specific property constituting a golf course will have been for the first time. However, the BVL MSBU within which it is situated has been in existence through which the county has been levying assessments annually since 1986 upon properties in it, including the golf clubhouse which is appurtenant to the golf course. Should the Florida Department of Revenue opine that the assessment of the golf course would trigger said extraordinary procedural requirements, a statement is sought determining that only the owner of the golf course need be mailed notice pursuant to section 197.3632(4)(b), Florida Statutes rather than to each of the several thousand other owners of property subject to assessments within the BVL MSBU.

If you are referring to the annual resolution of intent by the county to use the uniform method of collection for its MSTU described in rule 12D-18.003(2) and (3), F.A.C., no U.S. mail notice is required. Therefore, I assume you refer to the adoption of the non-ad valorem assessment roll, which requires both newspaper and U.S. mail notice. The non-ad valorem assessments themselves are levied by county or municipal ordinance, or special district resolution, and not necessarily in the same ordinance or resolution of the applicable local government adopting the non-ad valorem assessment roll. See section 197.3632(4)(a), Florida Statutes.

Your question is answered in the affirmative. Because the golf course has not been subject to the county's BVL MSBU assessment(s) prior to January 1, 1990 the assessment on its property would be "levied for the first time" as defined in rule 12D-18.002(2)(e), F.A.C. Apparently, the method of the assessment is being adjusted and this may be a new assessment.

However, because only the golf course property would be assessed, by the first time levy, only the golf course owner

would be required to be mailed notice as such owner would be the only

"... person owning property subject to the particular [first time] assessment...."

Section 197.3632(4)(b), Florida Statutes. The procedural requirements of Section 197.3632(4)(b), Florida Statutes would need to be observed under the circumstances set forth in Issue I of your petition.

To summarize this point, since the assessment is levied for a period of years, there is an issue whether one of the four factors in section 197.3632(4)(a) is triggered. Changing the assessment scheme to reach a golf course might be a new assessment, a first time levy. If all other taxpayers are unaffected, then the local government would only need to notify the golf course owner. If the assessment is for a period of years and the only taxpayer affected by the change is the golf course then the local government would only need to notify the golf course owner.

#### ANSWER TO ISSUE II

This issue becomes whether merging the three MSBUs into the BVL MSBU would constitute a "first time levy" and/or "change in local government's boundaries" and/or "a change in the purpose for such assessment or in the use of the revenue generated" within the meaning of section 197.3632(4)(a)1., 3. and 4., Florida Statutes, respectively, thereby triggering the extraordinary procedural requirements of section 197.3632(4), Florida Statutes.

Osceola County argues that a merger would not appear to constitute a change in local government boundaries as contemplated by section 197.3632(4)(a)3., Florida Statutes because "local government" is defined as "a county, municipality, or special district levying non-ad valorem assessments" under section 197.3632(1)(b), Florida Statutes.

If it is determined that such a merger would not constitute a

change in boundaries or change in purpose or use of revenues but would constitute a "first time levy", Osceola County seeks a determination that the first time levy would apply only to the owners of property subject to assessments in the former MSBUs and not those in the pre-existing BVL MSBU.

The nature of a municipal service unit created by county government pursuant to section 125.01(1)(q), Florida Statutes has been aptly described as merely a financing vehicle of county government rather than a political entity. State v. Sarasota County, 372 So.2d 1115 (Fla. 1979) and is not a special district as defined in section 189.403(1), Florida Statutes, and therefore is not a governmental entity.

Osceola County seeks an advisement determining that the Moreland Estates, Pebble Point, and/or Raintree Park MSBUs could be merged and incorporated within the BVL MSBU without constituting a "first time levy", a change in local government boundaries, or change in purpose or use of revenues within the meaning of section 197.3632(4)(a)1., 3., and 4., Florida Statutes, and thus that the procedural requirements of section 197.3632(4), Florida Statutes are not triggered.

Because the merger of the three MSBU's is a consolidation, therefore, of the financing mechanisms of the county as described in the Sarasota County case and sections 125.01(1)(q), and 189.403(1), Florida Statutes, the merger does not constitute a change in the local government's boundaries within section 197.3632(4)(a), Florida Statutes.

To summarize this point, a first time levy is defined as a levy for a year not previously levied or adopted. Since the assessment is levied for a period of years, there is an issue whether one of the four factors in section 197.3632(4)(a) is triggered. For purposes of this opinion, the expansion of the boundaries of an MSBU and the affecting of the newly affected owners might constitute a first time levy which would trigger the notice requirements, if the method of calculation of the assessment is not common to at least one of the currently levying MSBUS.

Where the method of calculation of the assessment is not common to at least one of the MSBU'S, the notification to the affected property owners is a statutory requirement, because of the first time levy, but not because of any government boundary change. It is also a well-advised procedure to ensure fairness in the expansion of assessment boundaries of MSBUS. The newly affected owners would then have the ability to attend the ordinance adoption meeting to discuss the amount of the assessment, the apportionment and the benefit to their specific parcel. The board has the power to "adjust the assessment or the application of the assessment to any affected property based on the benefit which the board will provide or has provided to the property with the revenue generated by the assessment." See section 197.3632(4)(c), Florida Statutes. If common to at least one MSBU, then it does not become a first time levy as a result of the boundary change in merging three MSBUS.

Again since the assessment is a first time levy for other reasons then it must be advertised as described in section 197.3632(4), Florida Statutes. It is a first time levy because it is a first time levy as described in rule 12D-18.002(2)(e), F.A.C. Moreover, unless levied for a term of years, each year this levy would meet the definition of "levied for the first time," as defined in that rule. Further, if it exceeds the authorized amounts at the time of its initial imposition, or if there is a change in the purpose for the assessment or the use of the revenue generated by the assessment, then the advertisement of section 197.3632(4) is also required. See section 197.3632(4)(a)2. and 4., Florida Statutes respectively. The general facts you have provided in your letter may raise a legitimate specific question of whether the method of calculation or the purpose of the assessment or use of the revenue has changed.

Since the basis on which the assessment is levied is not common to at least one of the currently levying MSBU'S, it is a first time levy. As to the landowners in the now larger MSBU, the assessment is a first time levy and the owners in that MSBU would be "newly affected."

If three contiguous, separate and adjacent subdivisions are

annexed into the Buenaventura Lakes MSBU (BVL), and if one of the four factors is triggered, the statute requires notice to be mailed to all newly affected residents of the now larger MSBU. In sum, expansion of the boundaries of an MSBU to extend an assessment to newly affected owners might constitute a first time levy and trigger the notice requirements, if the method of calculation of the assessment is not common to at least one of the currently levying MSBU'S.

### CONCLUSION

Since the assessment is levied for a period of years, there is an issue whether one of the four factors in section 197.3632(4)(a) is triggered. Changing the assessment scheme to reach a golf course might be a new assessment, a first time levy. If all other taxpayers are unaffected, then the local government would only need to notify the golf course owner. If the assessment is for a period of years and the only taxpayer affected by the change is the golf course then the local government would only need to notify the golf course owner. Expansion of the boundaries of an MSBU and the affecting of newly affected owners might constitute a first time levy which would trigger the notice requirements, if the method of calculation of the assessment is not common to at least one of the currently levying MSBU'S.

The above opinion represents my interpretation, opinion, and position on the points in issue. I hope this addresses the points you raise in your letter. If I may be of any further assistance, please do not hesitate to contact me.

Sincerely,

Stephen J. Keller  
Assistant General Counsel  
Office of General Counsel

SJK/sk