



STATE OF FLORIDA

OFFICE OF ATTORNEY GENERAL

ROBERT A. BUTTERWORTH

June 9, 1995

The Honorable Bill Nelson
State Treasurer and Insurance Commissioner
The Capitol
Tallahassee, Florida 32399-0301

Dear Commissioner Nelson:

You ask the following question:

Are revenues derived from assessments, premiums and policy surcharges imposed by the Board of Governors of the Residential Property and Casualty Joint Underwriting Association included within the term "state revenues" for purposes of Article VII, Section 1(e), of the Florida Constitution?

In sum:

Revenues derived from assessments, premiums and policy surcharges imposed by the Board of Governors of the Residential Property and Casualty Joint Underwriting Association are not included within the term "state revenues" for purposes of Article VII, Section 1(e), of the Florida Constitution.

During the November 1994 general election, the voters approved an amendment to Article VII, Section 1, Florida Constitution. As amended, section 1(e) of Article VII provides in pertinent part:

Except as provided herein, state revenues collected for any fiscal year shall be limited to state revenues allowed under this subsection for the prior fiscal year plus an adjustment for growth. . . . For purposes of this subsection, "state revenues" means taxes, fees, licenses, and charges for services imposed by the legislature on individuals, businesses, or agencies outside state government. However, "state revenues" does not include: . . . taxes, licenses, fees, and charges for services imposed by local, regional, or school district governing bodies

The question has been raised as to whether revenues derived from assessments, premiums and policy surcharges imposed by the Board

of Governors of the Residential Property and Casualty Joint Insurance Association on its member insurance companies constitute "state revenues" for purposes of the limitation on state revenues imposed by Article VII, Section 1(e), Florida Constitution.¹

Section 627.351(6), Florida Statutes, creates the Residential Property and Casualty Joint Underwriting Association (association) for the equitable apportionment or sharing among insurers of property and casualty insurance covering residential property of applicants who are in good faith entitled, but are unable, to procure insurance through the admitted voluntary market.² All insurers authorized to write insurance in this state participate in and are members of the association.³

The association is authorized to sell insurance and to levy supplementary assessments as set by the association's board of governors.⁴ Each member's portion of losses and expenses incurred are in the same proportion that the direct premiums the member has written on residential property in this state during the preceding calendar year bear to the aggregate direct premiums of all members of the association written on residential property in the preceding calendar year.⁵

While its creation is mandated by state statute, the association is composed of insurance companies providing residential insurance coverage in this state. Its function is to provide insurance to private individuals who might not otherwise be able to secure insurance in a voluntary market.⁶ It is, as the title to section 627.351, Florida Statutes, states, an insurance apportionment plan to ensure the equitable apportionment of sharing among property and casualty insurance insurers covering residential property of those applicants who are in good faith entitled, but are unable, to procure insurance through the admitted voluntary market.

While the statute recognizes that assessments may be imposed upon the members of the association, it is the association's board of governors that imposes such assessments, having first determined the need for and amount of such assessments.⁷ This office has not been provided with any information that such assessments, premiums, or policy surcharges are received by a state agency or otherwise deposited in the state treasury. Thus, while authorized by state statute, they are not collected or expended by the state.

In fact, section 627.351(6)(j), Florida Statutes, expressly states that the association is not a state agency, board or commission. For purposes of section 199.183(1), Florida

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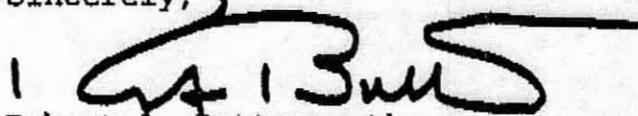
Statutes,⁸ the association is considered to be a political subdivision of the state.⁹ This office must defer to such a legislative characterization of the association until a court of competent jurisdiction determines otherwise. It is, however, a general rule of construction that the Legislature is presumed to know the existing provisions of law.¹⁰ Accordingly, it must be presumed that at the time the Legislature considered and adopted the joint resolution proposing the amendment of Article VII, Section 1(e), Florida Constitution, that was subsequently approved by the electorate, it was aware that it did not consider the association to be a state agency.

A review of proposed legislation seeking to implement Article VII, Section 1(e), Florida Constitution, reveals that the Legislature sought, among other things, to clarify what was meant by the term "state revenues," by stating that revenues received by insurance risk apportionment plans created under chapter 627, Florida Statutes, did not constitute "state revenues."¹¹ In addition, this office has been advised that various other state agencies examining this issue have concluded that revenues received by such joint underwriting associations would not fall within the limitations of Article VII, Section 1(e), Florida Constitution.¹²

This office is aware that Article VII, section 1(e), Florida Constitution, specifically excludes the Florida Hurricane Catastrophe Fund from the definition of state revenues. However, unlike the Residential Property and Casualty Joint Underwriting Association, the Florida Hurricane Catastrophe Fund is created by s. 215.555, Florida Statutes, as a state trust fund under the direction and control of the State Board of Administration and, therefore, an express exemption from the definition of state revenues was required.

In light of the above, I am of the opinion that revenues derived from assessments, premiums and policy surcharges imposed by the Board of Governors of the Residential Property and Casualty Joint Underwriting Association are not "state revenues" for purposes of Article VII, Section 1(e), Florida Constitution.

Sincerely,



Robert A. Butterworth
Attorney General

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¹ While this office has stated that joint underwriting associations such as the Florida Windstorm Underwriting Association are subject to the Public Records Law and the Government in the Sunshine Law, see, Op. Att'y Gen. Fla. 94-32 (1994), the open government laws of this state have historically been liberally construed and include not only state and local governmental agencies but also private entities acting on behalf of a public agency. The determination that a joint underwriting association constitutes an agency for purposes of Chapter 119 or section 286.011, Florida Statutes, would not, therefore, appear to be dispositive of the issue presented in the instant inquiry.

² Section 627.351(6)(a), Fla. Stat. (1994 Supp.).

³ Section 627.351(6)(b), Fla. Stat. (1994 Supp.).

⁴ See, s. 627.351(6)(c) and (g), Fla. Stat. (1994 Supp.).

⁵ Section 627.351(6)(b), Fla. Stat. (1994 Supp.).

⁶ See, s. 627.351(6)(c)8., Fla. Stat. (1994 Supp.), clarifying that the acceptance or rejection of a risk by the underwriting committee is considered to be the placing of private insurance.

⁷ Section 627.351(6)(g), Fla. Stat. (1994 Supp.). Cf., O'Malley v. Florida Insurance Guaranty Association, 257 So. 2d 9, 12 (Fla. 1971), in which the Supreme Court of Florida held that the deficit assessment revenues collected by the guaranty association did not constitute state tax revenues.

⁸ See, s. 199.183(1), Fla. Stat. (1993), providing that intangible personal property owned by a political subdivision of the state is exempt from taxation under chapter 199.

⁹ This office in Op. Att'y Gen. Fla. 95-23 (1995) recently stated that the revenue limitation contained in Art. VII, s. 1(e), Fla. Const., did not apply to ad valorem tax revenues imposed by a community college district pursuant to authority granted by special act of the Legislature as the community college constituted a political subdivision of the state and thus fell within the exception contained in Art. VII, s. 1(e) for taxes imposed by local, regional, or school district governing bodies.

¹⁰ See, e.g., Tamiami Trail Tours, Inc. v. Lee, 194 So. 305 (Fla. 1940) (Legislature is presumed to know its own statutes and when it enacts a new statute, it is done with that knowledge); Carcaise v. Durden, 382 So. 2d 1236, 1237 (Fla. 5th DCA 1980).

¹¹ See, e.g., HB 2731 (1995) (for purposes of Art. VII, s. 1(e), Fla. Const., the following shall not be considered "state revenues": revenues collected pursuant to state law by statutorily created nonprofit legal entities; such entities include insurance guaranty associations created pursuant to chapter 631 or chapter 440, Florida Statutes, . . . insurance risk apportionment plans created pursuant to chapter 627, Florida Statutes, . . . and other similarly created entities. House Bill 2731 died in messages on May 11, 1995. See also, SB 456 (1995).

¹³ See, Letter from Thomas D. McGurk, Director, Division of Accounting and Auditing, Office of the Comptroller to David Beggs, The Florida Senate, Committee on Ways and Means, dated April 12, 1995; Revenue Estimating Committee, Assumptions Used in Estimating State Revenues, December 7, 1994.