

except as otherwise excluded by the Constitution of the State of Florida immediately preceding the effective date of this act. . . .

Further, §4 of Ch. 73-21 states: "Any law inconsistent herewith is hereby repealed to the extent of such inconsistency. . . ."

Thus, inasmuch as the Adult Rights Law, [§743.07, F. S.] (effective July 1, 1973) removes the disability of nonage for all persons in this state who are eighteen years of age or older and provides that they shall enjoy and suffer the rights, privilege and obligations of all persons twenty-one years of age or older, it must be concluded that persons eighteen, nineteen, or twenty years of age, if otherwise qualified, may apply for employment and service as municipal firemen or policemen.

073-462—December 13, 1973

COUNTIES

POWER TO AMEND SPECIAL ACT REGULATING FORMATION OF SPECIAL DISTRICT

To: *J. Clint Brown, Hillsborough County Attorney, Tampa*

Prepared by: *Sydney H. McKenzie III, Assistant Attorney General*

QUESTION:

May a county, by ordinance amending a special law passed by the legislature prior to the 1968 Constitution, provide for petition by electors for the creation of a street lighting district in an unincorporated area and provide for the levy of a special assessment in a special street lighting district?

SUMMARY:

A county may, by ordinance, amend a special law relating to the unincorporated area of the county, preexistent to the 1968 Constitution, authorizing the creation of a special street lighting district in an unincorporated area of the county, so long as such district is not an autonomous agency independent of the county. The amendment may properly permit creation of the district without a referendum or election and the effecting of special assessments, as opposed to ad valorem taxes in such districts. In the alternative, the county might ignore the existing enabling legislation and create such a district pursuant to §125.01(1)(q), F. S.

Your question is answered in the affirmative.

It should be noted initially that, while your opinion request refers to compliance with Ch. 125.01, F. S., regarding the general powers of the county to create and levy taxes in a special district, the ordinance submitted in fact amends Ch. 30830, 1955, Laws of Florida, as amended by Chs. 61-2239 and 65-1646, Laws of Florida, and is not controlled by the provisions of §125.01(1)(q), F. S. Chapter 30830, *supra*, reads in pertinent part:

Section 2. Creation of Districts: Special street lighting improvement districts may be created and established in unincorporated areas in Hillsborough County under the provisions of this Act. . . .

Section 2 goes on to set out a procedure for a petition to the board of county commissioners by a majority of the qualified electors of a proposed district for the creation of the district and levy of special assessments. The board is then required

to hold hearings and, if the board members "determine to grant the petition," call a special election in accordance with §3 of the act:

Section 3. Election to Determine if District Shall Be Created: Such resolution shall also provide for the calling and holding of a special election in the district at which there shall be submitted to the freeholders who are qualified electors residing in the district the proposition whether such district shall be created and established and the improvements and special services set forth in such resolution financed as therein provided. . . .

Ordinance No. 70-1 of Hillsborough County, adopted January 21, 1970, reads in part as follows:

Section 2. Section 3 of chapter 30830, Special Acts 1955, Laws of Florida, [Election to Determine if District Shall Be Created], is amended by the addition of the following paragraph:

In the event that the real property of the said proposed special street lighting improvement district is owned solely and entirely by one person, firm or corporation and there are no other owners or residents within the boundaries of the said proposed district, no special election in the district shall be required.

Section 3. Section 4 of chapter 30830, Special Acts 1955, Laws of Florida, and section 1 of chapter 61-2239, Laws of Florida, are amended by the addition of the following paragraph:

In the event that the real property of the said proposed special street lighting improvement district is owned solely and entirely by one person, firm or corporation and there are no other owners or residents within the boundaries of the said proposed district, a certified copy of the resolution of the Board of County Commissioners and proof of publication of the notice of hearing on the proposed creation of such special street lighting district shall be filed with the Circuit Court in and for Hillsborough County, Florida. Upon the filing of said certified copy of the resolution and proof of publication, one of the judges of said court, if he should find the resolution in order and that all the requirements of law have been met, shall enter an order reciting the matters set forth in said resolution and ordering, adjudging and decreeing that the real property described in the said resolution shall be created and established as such "Special Improvement Service District No. _____ of Hillsborough County, Florida", and direct the levy of special assessments under the provisions of law to finance the proposed improvements and special services.

Ordinance No. 70-5 of Hillsborough County, adopted September 30, 1970, deletes the requirement in §3 of Ch. 30830, *supra*, that voters be, *inter alia*, freeholders of the proposed district.

Thus, Hillsborough County has amended the original enabling legislation to provide for deletion of the requirements of a referendum election for the creation of, and levy of a special assessment in, a statutory special street lighting district under certain specified circumstances and has, in effect, provided for the original petition to the board of county commissioners to effect the creation of the district and authorize a levy of the special assessment.

Article VIII, §1(f), State Const., reads in pertinent part:

. . . The board of county commissioners of a county not operating under a charter may enact, in a manner prescribed by general law, county ordinances not inconsistent with general or special law

Article VIII, §6(d), State Const., provides:

Local laws relating only to unincorporated areas of a county on the effective date of this article *may be amended or repealed* by county ordinance. (Emphasis supplied.)

Section 2 of Ch. 30830, *supra*, as well as the title thereof, evidences the fact that that law is applicable to or relates to the *unincorporated* areas of Hillsborough County. This is reinforced in the title and §1 of Ch. 65-1646, *supra*.

Under Art. X, §12(g), State Const., "special law" means a special or local law. As stated in *Davis v. Gronemeyer*, 251 So.2d 1 (Fla. 1971), at p. 4, "It follows that at least one definition of a local law is a 'special law'; that is, a special act of the Legislature" Thus, Ch. 30830 as amended should qualify as a local law, under Art. VIII, §6(d), State Const., which may be amended or repealed by ordinance, unless that law establishes an autonomous statutory entity or special district, in which case it would not come within the constitutional provision. See AGO's 072-149, 071-154, 071-146, and 069-99.

An analysis of the subject district indicates that it is not autonomous. The board of county commissioners levies the special assessments, not the district as a separate entity; and upon the enforcement of delinquent assessments, the affected lands become vested in the county, not the district. Also, any special assessments made are equalized by the board of county commissioners sitting as a board of equalization. Moreover, these statutes are simply enabling legislation, that is, permissive legislation authorizing the county to establish such districts for special improvements and to levy special assessments to defray the cost of such improvements. The districts, once established, would thus appear to be agencies or instrumentalities of the county, carrying out essential county functions and purposes.

It therefore appears that the county does have the power to amend or repeal the special law in question. It would be appropriate therefore to amend the statute so as to establish the districts by action of the board of county commissioners and eliminate altogether the referendum or election requirements. As it now stands, Ch. 30830, Laws of Florida, does not require any referendum election approving the levy of the annual special assessment or the amount of such assessments. In fact, the voters, in the election presently required by §3, Ch. 30830, do not vote on the amount of special assessments, only on the question of the establishment of the district, the making of the specified improvements, and the financing of such improvements by special assessments.

In the alternative, since Ch. 30830, as amended, is enabling legislation as noted above, the county might choose to proceed under §125.01(1)(q), F. S., in establishing the district and ignore Ch. 30830, as amended. *Cf.*, *State v. Collier County*, 171 So.2d 890 (Fla. 1965); *Herbert v. City of Daytona Beach*, 163 So. 565 (Fla. 1935); and no referendum is required to create such a district.

No referendum would be required for any special assessments in such a special purpose district, although a referendum would be required to levy ad valorem taxes in such districts. See AGO 072-162.

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SALTWATER FISHING

REGULATION OF SPEARFISHING—STATE PREEMPTION

To: Bill Fulford, Representative, 40th District, Orlando

Prepared by: Michael Parrish, Assistant Attorney General

QUESTIONS:

- I. What is meant by the term "immediate area" in §370.172(3), F. S.?