

Maximum millage by special district and referendum

Number: AGO 75-160

Date: November 09, 1998

Subject:

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TAXATION--MAXIMUM MILLAGE BY SPECIAL DISTRICT--REFERENDUM APPROVAL

To: Philip C. Gorman, Attorney, Trustees of Northwest Lake County Hospital District, Leesburg

Prepared by: David M. Hudson, Assistant Attorney General

QUESTION:

Is the authorization contained in s. 14, Ch. 69-1202, Laws of Florida, for the Board of Trustees of the Northwest Lake County Hospital District to levy ad valorem taxes at a rate not to exceed 1 mill valid as to the portion of said levy in excess of the 1/2 mill authorized to be levied by s. 2, Ch. 65-1785, Laws of Florida, unless said excess is approved by vote of the electors of said district?

SUMMARY:

Article VII, s. 9(b), State Const., prohibits the Northwest Lake County Hospital District from levying ad valorem taxes in excess of a rate of 1/2 mill until such time as the authorization for a higher millage levy contained in s. 14, Ch. 69-1202, Laws of Florida, or subsequently enacted legislation is approved by vote of the electors of the district.

Your question is answered by the following discussion.

Chapter 65-1785, Laws of Florida, created the Northwest Lake County Hospital District, and s. 2 thereof provided for the levy of ad valorem taxes within the district, for district purposes, at a rate "not to exceed one-half (1/2) mill." Section 6 provided that the act was conditioned to become effective upon approval by vote of the electors of the area affected; and the act was subsequently approved in the voter referendum called for therein.

In 1969 the Legislature enacted a special law, Ch. 69-1202, Laws of Florida, also relating to the Northwest Lake County Hospital District, and s. 14 thereof authorized the levy of ad valorem taxes for district purposes at a rate "not to exceed one (1) mill." Chapter 69-1202 became effective immediately upon becoming a law and became a law without the Governor's approval. It does not appear that Ch. 69-1202 or the provision contained in s. 14 thereof regarding the authorization of a 1-mill levy of ad valorem taxes has been submitted to the electors within the district for their approval or rejection in a referendum election. In addition, s. 25 provided:

"This act shall not be construed as repealing any of the provisions of any other law, general,

special or local, pertaining to the same hospital district as set out herein, but shall be deemed to supersede such other law or laws in the exercise of the powers provided in this act insofar as such other law or laws are inconsistent with the provision of this act; however, all other laws or parts of laws in conflict herewith, are hereby repealed."

See *also* AGO 075-32 and discussion contained therein concerning the "grandfather clause" for special district millage levies provided by Art. XII, s. 15, State Const.

Section 9(b) of Article VII, State Const., provides in pertinent part:

"Ad valorem taxes . . . shall not be levied in excess of the following millages . . . for all county purposes, ten mills; for all municipal purposes, ten mills; for all school purposes, ten mills; and *for special districts a millage authorized by law approved by vote of the electors . . .*" (Emphasis supplied.)

The above-quoted portion of Art. VII, s. 9(b), State Const., imposes a millage cap -- the maximum millage which may be levied -- for county purposes, municipal purposes, school purposes, and special districts. The maximum millage is set at 10 mills each for county, municipal, and school purposes. The maximum millage which may be levied by a special district is not specifically established by the Constitution, but is described as that millage which has been "authorized by law approved by vote of the electors;" *i.e.*, the millage cap or limit provided in an enactment of the Legislature which has been approved "by a vote of the electors." Thus, a special district lacks the power or authority to levy ad valorem taxes at a millage rate in excess of the millage cap which has been set by law and approved in a voter referendum.

The 1/2-mill cap set by s. 2, Ch. 65-1785, *supra*, has been approved by a vote of the electors within the district; however, since the 1-mill cap set by s. 14, Ch. 69-1202, *supra*, has not been so approved, it is my opinion that Art. VII, s. 9(b), State Const., prohibits the levy by the northwest Lake County Hospital District of ad valorem taxes at a rate exceeding 1/2 mill until such time as the authorization of s. 14, Ch. 69-1202 or the authorization for a higher millage levy contained in subsequently enacted law is approved by a vote of the electors of the district. See AGO's 071-310, 075-24, and 075-32.