Impact fees, educational facilities

Number: INFORMAL

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Ms. Jerri A. Blair
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Dear Ms. Blair:

You have asked several questions on behalf of the City of Wildwood. The first inquires as to the ability of the City of Wildwood to contract with developers within the city's urban services district, but outside the city's limits, to pay impact fees for services provided by the city within the urban services district. The second and third involve an instance where you state that the county has elected not to pass an educational impact fee and the city has chosen to do so. You question whether in the event a city enacts an ordinance imposing an educational impact fee, the city and the school board may enter into a contract entitling the city to school capacity resulting from collection of the fee or reserving existing school capacity based upon payment of the fees to the school board. Your final question relates to the constitutionality of an impact fee collected from a limited area that would not benefit from the capacity created by the fee.

Initially, I must decline to comment upon the actions of a county or a school board absent a request from the specific entity. As to the questions involving the actions of the school board and county, the following will generally discuss the requirements of a validly imposed impact fee. As to your fourth question, this office does not comment on the constitutionality of actions by any governmental entity. It is assumed that duly enacted legislation is constitutionally sound until declared otherwise by a court of competent jurisdiction.

The premise of a viable impact fee is that it is based upon the pro rata share of the reasonably anticipated costs of capital expansion required to provide a service to a user.[1] The nature of such fees was expressed by the Supreme Court of Florida in *Contractors and Builders Association of Pinellas County v. City of Dunedin*,[2] as follows:

"The avowed purpose of the ordinance in the present case is to raise money in order to expand the water and sewerage systems, so as to meet the increased demand which additional connections to the system create. *The municipality seeks to shift to the user expenses incurred on his account*. . . . "[3] (emphasis in the original)

This office has also concluded that impact fees are in the nature of user charges.[4] In Attorney General Opinion 76-137, this office commented upon the imposition of an impact fee for the construction of municipal water and sewer facilities, stating, "there is little doubt that the fee imposed (by city ordinance) is not a tax or a special assessment but is a valid imposition of an 'impact fee' or user charge for the privilege of connecting to the city's water and sewer system . . . ."

The Court in *City of Dunedin* set forth the test to be applied to test the validity of a locally imposed "impact fee." In order to be valid, such an impact fee must meet the following test: (1) new development must require that the present system of public facilities be expanded; (2) the fees imposed on users must be no more than what the local governmental unit would incur in accommodating the new users of the system; and (3) the fees must be expressly earmarked and spent for the purposes for which they were charged.[5]

Your first question involves the ability of a municipality to impose impact fees for services provided outside the city limits, but within the city's urban services district. While it is recognized that cities have broad home rule powers, the ability of a city to exercise its powers outside its jurisdiction is strictly dependent upon legislative authorization.[6] Section 180.02(2), Florida Statutes, provides:

"Any municipality may extend and execute all of its corporate powers applicable for the accomplishment of the purposes of this chapter outside of its corporate limits, as hereinafter provided and as may be desirable or necessary for the promotion of the public health, safety and welfare or for the accomplishment of the purposes of this chapter; provided, however, that said corporate powers shall not extend or apply within the corporate limits of another municipality."

A city availing itself of the provisions of Chapter 180, Florida Statutes, may create a zone or area by ordinance and prescribe reasonable regulations for all persons or corporations within the area

"to connect, when available, with any sewerage system or alternative water supply system, including, but not limited to, reclaimed water, aquifer storage and recovery, and desalination systems, constructed, erected and operated under the provisions of this chapter; provided, however, in the creation of said zone the municipality shall not include any area within the limits of any other incorporated city or village, nor shall such area or zone extend for more than 5 miles from the corporate limits of said municipality."

The city's governing body must pass a resolution or ordinance reciting the utility to be constructed or extended and its purpose, the proposed territory to be included, the method of financing the project, the cost, and other provisions deemed necessary.

Pursuant to section 180.06, Florida Statutes, municipalities are authorized:

"(1) To clean and improve street channels or other bodies of water for sanitary purposes;
(2) To provide means for the regulation of the flow of streams for sanitary purposes;
(3) To provide water and alternative water supplies, including, but not limited to, reclaimed water, and water from aquifer storage and recovery and desalination systems for domestic, municipal or industrial uses;
(4) To provide for the collection and disposal of sewage, including wastewater reuse, and other liquid wastes;
(5) To provide for the collection and disposal of garbage;
(6) And incidental to such purposes and to enable the accomplishment of the same, to construct reservoirs, sewerage systems, trunk sewers, intercepting pipelines, distribution systems, purification works, collection systems, treatment and disposal works;
(7) To construct airports, hospitals, jails and golf courses, to maintain, operate and repair the

same, and to construct and operate in addition thereto all machinery and equipment;
(8) To construct, operate and maintain gas plants and distribution systems for domestic, municipal and industrial uses; and
(9) To construct such other buildings and facilities as may be required to property and economically operate and maintain said works necessary for the fulfillment of the purposes of this chapter."

The governing body of the municipality may establish "just and equitable rates or charges to be paid to the municipality for the use of the utility by each person, firm or corporation whose premises are served thereby[.]" Section 180.19, Florida Statutes, further recognizes that a municipality constructing public works authorized by the chapter may permit any other municipality and the owners or association of owners of lots or lands outside of its corporate limits to connect with or use the utilities mentioned in the chapter "upon such terms and conditions as may be agreed between such municipalities, and the owners or association of owners of such outside lots or lands."

The statute acknowledges that a city may enter into agreements with owners of lots outside the corporate limits of the city upon such terms and conditions agreed between the city and the owners. There is nothing that would appear to exclude developers who own lots outside the city limits, but within the municipal services area from the provisions of the statute.

In responding to your questions involving the ability of a municipality to impose an impact fee for educational facilities and turn the collected fees over to the school district in exchange for school capacity, the basic requirements of a validly imposed impact fee must still be met. While a local government’s comprehensive plan generally must contain a public school facilities element, such a requirement does not appear to bestow any additional powers to impose an impact fee in a manner other than previously discussed. Moreover, reliance upon the authority of a municipality to impose educational impact fees pursuant to Chapter 180, Florida Statutes, would appear to be tenuous, in light of the enumerated purposes to be fulfilled under the act.[7] It would be imperative, therefore, that a municipality contemplating the imposition of an impact fee for educational facilities be able to show a reasonable connection or rational nexus between the need for additional capital facilities, i.e., new or additions to existing facilities, and the growth in population within the city. In addition, it must be demonstrated that there is a reasonable connection or rational nexus between the expenditure of the funds collected and the benefits accruing to those paying the fee. Courts have said that in order to fulfill this second requirement, the impact fees collected must be specifically earmarked for use in acquiring capital facilities to benefit the new residents.[8]

I would note that the Legislature has provided a means for district school boards, affected local general purpose governments, and benefited private interests to cooperate in providing education facilities in section 1013.355, Florida Statutes.[9]

I trust that these informal opinions will be of assistance to you.

Sincerely,

Lagran Saunders

Assistant Attorney General

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[1] *See Contractors and Builders Association of Pinellas County v. City of Dunedin*, 329 So. 2d 314 (Fla. 1976), *appeal after remand*, 358 So. 2d 846 (Fla. 2nd DCA 1978), *cert. denied*, 444 U.S. 867 (1979). *See also Home Builders and Contractors Association of Palm Beach County, Inc. v. Board of County Commissioners of Palm Beach County*, 446 So. 2d 140 (Fla. 4th DCA 1983), *petition for review denied*, 451 So. 2d 848 (Fla. 1984), *appeal dismissed*, 105 S.Ct. 376 (1984).

[2] 329 So. 2d 314 (Fla. 1976).

[3] 329 So. 2d at 318. *Cf. Loxahatchee River Environmental Control District v. School Board of Palm Beach County*, 496 So. 2d 930 (Fla. 4th DCA 1986), *approved*, 515 So. 2d 217 (Fla. 1987), in which the court determined that certain service availability standby charges were within the definition of impact or service availability fees established by the State Department of Education.

[4] *See* Ops. Att'y Gen. Fla. 76-137 (1976), 82-9 (1982), and 85-101 (1985).

[5] 329 So. 2d at 320-321.

[6] *See* s. 2(c), Art. VIII, Fla. Const. (exercise of extraterritorial powers by municipalities shall be as provided by general or special law).

[7] *See* s. 180.06, Fla. Stat. *See also City of West Palm Beach v. Board of Trustees of the Internal Improvement Trust Fund,* 746 So. 2d 1085 (Fla. 1999) (where statute first uses terms confined and limited to a particular class of a known species of things and later uses a broader term, the more general word is construed as applying to the same kind of species with those comprehended by the preceding limited and confined terms).

[8] *See St. Johns County, Florida v. Northeast Florida Builders Association*, 583 So. 2d 635, 637 (Fla. 1991).

[9] *See* s. 1013.355(2), Fla. Stat., authorizing the creation of educational facilities benefit districts pursuant to interlocal cooperation agreements between a district school board and all local general purpose governments within whose jurisdiction a district is located; s. 1013.355(4)(j), Fla. Stat., allowing the governing body of such a district to levy, impose, collect, and enforce non-ad valorem assessments, as defined by s. 197.3632(1)(d), pursuant to this act, chapters 125 and 166, and ss. 197.3631, 197.3632, and 197.3635; and s. 1013.356(1), Fla. Stat., stating that all educational facilities impact fee revenue collected for new development within the educational facilities benefit district or community development district must be provided to the school district annually until the district’s financial obligations are completed.