Ad valorem taxes, municipally owned golf course

Number: INFORMAL

Date: October 03, 2005

The Honorable Marsha M. Faux
Polk County Property Appraiser
255 N. Wilson Avenue
Bartow, Florida 33830-3951

Dear Ms. Faux:

As the Polk County Property Appraiser you have asked for assistance in determining whether a municipally-owned golf course operated by municipal employees qualifies for an ad valorem tax exemption. You have also asked, assuming the answer to your first question is "yes," whether the bar, restaurant, and pro-shop areas also qualify for an ad valorem tax exemption if they are operated by municipal employees.

Municipalities are not subdivisions of the state for purposes of taxation and, therefore, are not immune from taxation.[1] However, the Florida Constitution makes land owned by a municipality exempt from ad valorem taxation under certain circumstances. Article VII, section 3(a), Florida Constitution, provides in part that "[a]ll property owned by a municipality and used exclusively by it for municipal or public purposes shall be exempt from taxation."

Section 196.199, Florida Statutes, implementing the constitutional language, provides an exemption from taxation for certain governmentally owned property. The statute provides:

"(1) Property owned and used by the following governmental units shall be exempt from taxation under the following conditions:
(a) All property of the United States shall be exempt from ad valorem taxation, except such property as is subject to tax by this state or any political subdivision thereof or any municipality under any law of the United States.
(b) All property of this state which is used for governmental purposes shall be exempt from ad valorem taxation except as otherwise provided by law.
(c) *All property of* the several political subdivisions and *municipalities* of this state or of entities created by general or special law and composed entirely of governmental agencies, or property conveyed to a non-profit corporation which would revert to the governmental agency, *which is used for governmental, municipal, or public purposes* shall be exempt from ad valorem taxation, except as otherwise provided by law." (e.s.)

Thus, property owned by municipalities and used for governmental, municipal, or public purposes is exempt from ad valorem taxation.

The phrase "municipal purpose," as it is used in Article VII, section 3(a), Florida Constitution, has been interpreted to encompass all activities essential to the health, morals, protection and welfare of the municipality.[2] Section 196.012(6), Florida Statutes, defines "[g]overnmental,

municipal, or public purpose or function" as follows:

"Governmental, municipal, or public purpose or function shall be deemed to be served or performed when . . . any municipality, agency, special district, authority, or other public body corporate of the state is demonstrated to perform a function or serve a governmental purpose which could properly be performed or served by an appropriate governmental unit or which is demonstrated to perform a function or serve a purpose which would otherwise be a valid subject for the allocation of public funds. . . ."

"Municipal functions" have been held to be those created or granted for the special benefit and advantage of the urban community contained within the corporate boundaries.[3] Florida courts have ruled that municipal functions include functions which promote the comfort, convenience, safety and happiness of the citizens of the municipality rather than the welfare of the general public.[4]

In *Page v. City of Fernandina Beach,*[5] the First District Court of Appeal noted that city owned and operated property (as opposed to property that had been leased to a private entity) was exempt from taxation under a broad construction of "municipal purpose." The court in *Fernandina* was asked to consider a city's argument for ad valorem tax exemptions for a number of separate parcels of municipal property: a marina; an airport; several vacant lots; and a beach concession. With regard to the marina property the court found that:

"Municipal operation of a marina is a legitimate municipal corporate undertaking for the comfort, convenience, safety, and happiness of the municipality’s citizens. Indeed, the uncontradicted expert testimony was that operation of this marina constituted a proper municipal or public function. When a city operates a marina it owns, marina property it has not leased to a nongovernmental entity is exempt from ad valorem taxation. . . . . But operating a marina partakes of no aspect of sovereignty and does not warrant an exemption for a marina leased to a nongovernmental operator seeking profits."[6]

The airport property, subject to the same "public purpose" analysis, did not qualify for the exemption from ad valorem taxation under Article VII, section 3, Florida Constitution, and section 196.199(1)(c), Florida Statutes, because it was leased to nongovernmental lessees and was not "used exclusively by [the City] for municipal or public purposes." The city’s beach concession included a structure containing restrooms, showers, a storage area, and an office for city-employed lifeguards. The city owned and operated the building during the tax period in question and the court held that the property was exempt. Finally, the Property Appraiser for Nassau County had questioned the claim of tax exemption for several vacant lots the City of Fernandina Beach had obtained by foreclosure of municipal liens or by deeds in lieu of foreclosure. The city was planning to offer these lots for sale "eventually if they cannot be used as a public park or for municipal purposes (such as a sewage lift station)." Because these lots were "property owned and used" by the municipality, the court determined that the lots were exempt from taxation. The court relied on an earlier Florida Supreme Court case, *City of Sarasota v. Mikos*,[7] stating that vacant land held by a municipality is presumed to be in use for a public purpose if it is not actually in use for a private purpose on tax assessment day. Thus, the common elements looked to by the court to determine whether these parcels were subject to ad valorem taxation was ownership and operation of the property by the municipality for municipal purposes.

You have advised this office that the golf course, bar, restaurant, and pro-shop areas are owned and operated by a municipality. It appears that this property is operated by the municipality for the "comfort, convenience, safety and happiness of the citizens of the municipality." Based on the provisions of Article VII, section 3(a), Florida Constitution, and section 196.199(1)(c), Florida Statutes, and the current case law interpreting these provisions, it would appear that the golf course, bar, restaurant, and pro-shop property are used for municipal purposes or municipal functions and may be exempt from ad valorem taxation.[8]

However, in *Department of Revenue v. City of Gainesville,*[9] the court considered the constitutionality of a statute which imposed tax liability on municipal property used to provide telecommunications services. The trial court had declared the statute unconstitutional because it contravened Article VII, section 3(a), Florida Constitution. The appellate court determined that the property in question was used by the city for a municipal purpose and that the Legislature's attempt to statutorily condition the provision of these municipal services on the payment of an amount equal to any ad valorem tax liability was in direct conflict with the constitutional provision. This office, as counsel for the Department of Revenue, has appealed the First District's decision and has argued that commercial activities taking place on governmentally-owned leaseholds are subject to ad valorem taxation. The position this office takes in its appeal of *Department of Revenue v. City of Gainesville*, is that advanced by Justice Ervin in his dissent in the case.[10]

This informal advisory opinion was prepared for you by the Department of Legal Affairs in an effort to be of assistance to you. The opinions expressed herein are those of the writer and do not constitute a formal opinion of the Attorney General.

Sincerely,

Gerry Hammond
Assistant Attorney General

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[1] *See Greater Orlando Aviation Authority v. Crotty*, 775 So. 2d 978 (Fla. 5th DCA 2000)*(citing Orlando Utilities Commission v. Milligan*, 229 So. 2d 262 (Fla. 4th DCA 1969), *cert. denied*, 237 So. 2d 539 (Fla. 1970).

[2] *Department of Revenue v. City of Gainesville*, 859 So. 2d 595, 599 (Fla. 1st DCA 2003); *State v. City of Jacksonville,* 50 So. 2d 532, 535 (Fla. 1951).

[3] *Department of Revenue, Id.*; *State ex rel. Harper v. McDavid*, 200 So. 100 (1941); *Winter Park v. Montesi*, 448 So. 2d 1242, 1244 (Fla. 5th DCA 1984).

[4] *Greater Orlando Aviation Authority v. Crotty*, *supra* n.1 at 980-981 (Fla. 5th DCA 2000).

[5] 714 So. 2d 1070 (Fla. 1st DCA 1998), *rev. den.* 728 So. 2d 201 (Fla. 1998).

[6] *Id.,* at 1076 - 1077. *And see Sebring Airport Authority v. McIntyre,* 783 So. 2d 238 (Fla.

2001).

[7] 374 So. 2d 458, 460 - 461 (Fla. 1979),

[8] *And see Sebring Airport Authority v. McIntyre*, *supra* n.6 (discussing the language and purpose of Art. VII, s. 3(a), Fla. Const.); and *Department of Revenue v. City of Gainesville, supra* n.2 (property owned and used by a municipality to provide telecommunications services is exempt as used for municipal purpose).

[9] 859 So. 2d 595 (Fla. 1st DCA 2003).

[10] *See Department of Revenue v. City of Gainesville*, *id.*, dissent by Ervin, p. 601 *et seq.*