

County intergovernmental radio communication program

Number: INFORMAL

Date: March 12, 1998

The Honorable Sandra L. Murman
Representative, District 56
Florida House of Representatives
304 Plant Avenue
Tampa, Florida 33606

Dear Representative Murman:

You ask whether a city, specifically the City of Tampa, is entitled to the surcharge on moving traffic violations pursuant to section 318.21(10), Florida Statutes.

Section 318.21, Florida Statutes, provides a scheme for the distribution of civil penalties by county courts. The act states that "[a]ll civil penalties received by a county court pursuant to the provisions of this chapter shall be distributed and paid monthly" pursuant to a formula established by the act.[1] Subsection (10) of the statute provides:

"Twelve dollars and fifty cents from each moving traffic violation must be used by the county to fund that county's participation in an intergovernmental radio communication program approved by the Division of Communications[2] of the Department of Management Services. If the county is not participating in such a program, funds collected must be used to fund local law enforcement automation and must be distributed to the municipality or special improvement district in which the violation occurred or to the county if the violation occurred within the unincorporated area of the county."

Prior to 1996, section 316.655(7), Florida Statutes (1995), provided:

"In addition to any other penalty provided for violation of the state uniform traffic control law pursuant to [chapter 316] or chapter 318, any county that participates in an intergovernmental radio communication program approved by the Division of Communications of the Department of Management Services may assess an additional surcharge of up to \$12.50 for each moving traffic violation, which surcharge must be used by the county to fund that county's participation in the program."

This office, in Attorney General Opinion 94-38, stated that under the then-existing language of section 316.655, Florida Statutes, the use of the surcharge to fund a municipality's, rather than a county's, participation in an intergovernmental communication program was not authorized. The language of section 316.655, Florida Statutes, quoted above was deleted in 1996 by the same act that added language to section 318.21, Florida Statutes, authorizing a municipality to use the surcharge for law enforcement automation.[3]

While section 318.21(10), Florida Statutes, permits distribution to a municipality, such distribution

occurs only if the county in which the municipality is located is not participating in an intergovernmental radio communication program approved by the Division of Communications of the Department of Management Services (department).[4] The funds received by a municipality pursuant to section 318.21(10), Florida Statutes, must be used to fund law enforcement automation.[5] If, however, the county is participating in an intergovernmental radio communication program approved by the department, the clerk of court is directed by the statute to distribute these funds to the county to fund its participation in the program.

This office has contacted the department and been advised that Hillsborough County has an intergovernmental radio communication program approved by the department. Accordingly, the surcharge funds provided in section 318.21(10), Florida Statutes, are to be distributed by the clerk to the county as prescribed by that statute. In addition, it appears that the county may have issued bonds pledging such revenues from the traffic violations surcharge for the payment of the radio communication program. The courts of this state have generally recognized that the law affecting enforcement of bonds becomes a vital part of the bond contract so that neither the authority nor the ability to perform the contract may be impaired to any degree by subsequent legislation, whether designed to operate as an impairment or not.[6]

Thus, for example, the Supreme Court of Florida in *State v. City of Coral Gables*[7] responded to a challenge to the power of the City of Coral Gables to contract for the levy, collection and distribution of the cigarette taxes during the life of its Storm Sewer Bonds, when the charter of the City and other applicable provisions of the law under which said taxes are collected and administered might be repealed at any time. The Court stated:

"This question is concluded by the well settled principle that the law in force at the time the contract is made forms part of the contract and when a county, municipality or other governmental entity issues its bonds under a statute providing for payment of said bonds, including the levy of an annual tax to service them, the legislature is without power to repeal the statute or otherwise impair the contract." [8]

I trust the above informal comments may be of assistance in this matter.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] *Cf.* s. 316.660, Fla. Stat., stating that "[e]xcept as otherwise provided by law, all fines and forfeitures received by any county court from violations of any of the provisions of this chapter, or from violations of any ordinances adopting matter covered by this chapter, must be paid and distributed as provided in s. 318.21."

[2] Section 3, Ch. 97-296, Laws of Florida, deleted the division in the reorganization of the

Department of Management Services. Section 4 of the act, however, requires the Division of Statutory Revision to prepare a reviser's bill for submission to the 1998 Regular Session of the Legislature substituting references to the Department of Management Services in the Florida Statutes for references to divisions, bureaus, or other units of that department.

[3] See s. 40, Ch. 96-350, Laws of Florida, amending s. 316.655, Fla. Stat. (1995), and s. 49, Ch. 96-350, Laws of Florida, which added the language currently contained in s. 318.21(10), Fla. Stat.

[4] *Cf.* Op. Att'y Gen. Fla. 97-38 (1997), in which this office considered the distribution of surcharge funds to two towns in Walton County pursuant to s. 318.21(10), Fla. Stat., when this office was advised that Walton County did not participate in an intergovernmental radio communication program approved by the Division of Communications of the Department of Management Services.

[5] See Op. Att'y Gen. Fla. 97-73 (1997), concluding that the civil penalty imposed for traffic violations that is disbursed to a city pursuant to s. 318.21, Fla. Stat., to fund local law enforcement automation may not be used to purchase law enforcement automobiles.

[6] See *City of Fort Lauderdale v. State ex rel. Elston Bank & Trust Co.*, 169 So. 584 (Fla. 1936); *State ex rel. Neafie v. Board of Commissioners of Everglades Drainage District*, 190 So. 712 (Fla. 1939) (statute attempting to reduce acreage taxes for the Everglades Drainage District is invalid because impairing obligation of contract with bondholders); *State ex rel. Woman's Ben. Ass'n v. Port of Palm Beach District*, 164 So. 851 (Fla. 1935) (subsequent legislation cannot annul nor diminish, retard or lessen, efficacy of prior laws entering into or forming part of contracts with bondholders). See also *Chiles v. United Faculty of Florida*, 615 So. 2d 671 (Fla. 1993) (Legislature's unilateral modification and abrogation of collectively bargained agreement for pay raise for public employees, which had been funded, violated right to collectively bargain and constituted impermissible impairment of contract). Compare *Flint v. Duval County*, 170 So. 587 (Fla. 1936) (act authorizing use of portion of large surplus fund which was greatly in excess of needs for payment of outstanding bonds of existing bridge in construction of new bridge did not violate obligation of contract of existing bridge bonds, where toll collections continued and surplus fund of existing bridge revenues was not reduced below fund's primary uses for existing bridge bond payments); *State ex rel. Seville Holding Co. v. Draughon*, 173 So. 353 (Fla. 1937) (constitutional provision against impairment of contract does not apply to withdrawal of right to recover ordinary statutory penalties even after penalties have been incurred, but penalty imposed by law as sanction for enforcement or protection of contract right may not be constitutionally withdrawn where to do so directly lessens or impairs the legal value of the contract to which the penalty is attached).

[7] 72 So. 2d 48 (Fla. 1954).

[8] *Id.* at 49.