# Schools, liability for special assessments

**Number:** INFORMAL

**Date:** March 03, 1998

The Honorable Daniel Webster
Speaker, Florida House of Representatives
420 The Capitol
Tallahassee, Florida 32399-1300

The Honorable Luis Morse
Speaker Pro Tempore
Florida House of Representatives
Suite 302
807 Southwest 25th Avenue
Miami, Florida 33135-4867

RE: SPECIAL ASSESSMENTS--TAXATION--TAX EXEMPTIONS--EDUCATIONAL PROPERTY--SCHOOLS--exemption for educational property from special assessments. Art. VII, s. 3, Fla. Const.; s. 235.26, Fla. Stat.

Dear Mr. Webster and Mr. Morse:

You have asked whether the City of Miami has the authority to enact an ordinance levying a special assessment against the county schools and other political subdivisions of the state for purposes of funding fire-rescue services in the city. This office must presume the validity of a duly enacted ordinance. However, the following general comments regarding special assessments and other fees imposed on educational property are offered.

A special assessment is an enforced contribution from a property owner imposed on the theory that the assessed property derives some special or peculiar benefit in the enhancement of value as a result of the improvement or service funded by the proceeds from the assessment.[1] A user fee or service charge is a fee imposed for the use of the particular governmental facility or service that benefits the person paying the fee in a manner not shared by other members of the community. Another characteristic of user fees is that they are paid by choice; that is, the person paying the fee has the option of not using the governmental service and thereby avoid the payment of the charge.[2]

In Attorney General Opinion 90-47, this office considered whether stormwater fees imposed by a city pursuant to section 403.0893, Florida Statutes, could be charged against property owned by the State of Florida. The fees discussed in that opinion were imposed on property within the city regardless of use and were based upon the property receiving some particular benefit from the stormwater system. The city used section 197.363, Florida Statutes, to collect the fees. These factors were considered in concluding that the fees were special assessments that, in the absence of legislation subjecting the state to liability, could not be assessed against state property. It was noted, however, that to the extent the city sought to impose the fees as service

charges, the state could be liable for such charges.[3]

Thus, to the extent a city seeks to impose fees as service charges, governmental entities using the services provided by the city would be liable for such charges. While state property used for public purposes is not generally subject to taxes and special assessments, the state would be liable for charges for services it uses.[4] Similarly, property owned by school districts that is used for educational purposes is constitutionally and statutorily exempt from taxation.[5] This exemption, however, does not necessarily extend to special assessments.

Section 235.26(1)(a), Florida Statutes, provides

"all public educational and ancillary plants constructed by a district school board . . . must conform to the State Uniform Building Code for Public Educational Facilities Construction, and such plants are exempt from all other state, county, district, municipal, or local building codes, interpretations, building permits, and assessment of fees for building permits, ordinances, road closures, and *impact fees or service availability fees*. . . ." (e.s.)

Impact fees and service availability fees are not the same as special assessments.[6] While impact fees historically have been likened to a form of taxation, the Supreme Court of Florida in *City of Boca Raton v. State*[7] held that the city's authority to impose a special assessment was derived from its home rule power.[8] More recently, in *Sarasota County v. Sarasota Church of Christ, Inc.,*[9] the Court addressed the validity of a special assessment for stormwater improvements and services imposed by the county on religious property. The church argued that the charge was nothing more than a tax from which it would be exempt. The court concluded that the levy was a valid special assessment against the church's property.

Thus, an exemption from a special assessment for educational property may not be derived from the constitutional exemption from ad valorem taxation for such property. Rather, the Legislature would have to provide an exemption such as it has done in section 235.26(1)(a), Florida Statutes.

While school property may be subject to special assessments, section 235.34, Florida Statutes, authorizes school boards in their discretion to pay for special improvements and provides that any such payments are not mandatory unless the improvement and its costs have been agreed to by the school board prior to the improvement being made.[10] This precludes the imposition of a special assessment on school property, absent approval by the school board. Section 235.34(2), Florida Statutes, provides:

"The provisions of any law, municipal ordinance, or county ordinance to the contrary notwithstanding, the provisions of this section regulate the levying of assessments for special benefits on school or community college districts and the directing of the payment thereof. *Any municipal ordinance or county ordinance making provision to the contrary is void*." (e.s.)

In sum, a municipality's authority to levy special assessments is derived from its home rule powers and any exemption from such assessments for educational property would have to be legislatively created. However, section 235.34, Florida Statutes, authorizes a school board to pay special assessments only when the improvement has been agreed to by the board prior to

its being made and renders void any municipal ordinance with provisions to the contrary.

I trust these informal comments provide some assistance in the resolution of this matter.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

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[1] *See Sarasota County v. Sarasota Church of Christ, Inc.*, 667 So. 2d 180 (Fla. 1995), holding that a valid special assessment must meet two requirements: property assessed must derive a special benefit from the service provided; and the assessment must be fairly and reasonably apportioned according to the benefits received.

[2] *See State v. City of Port Orange*, 650 So. 2d 1 (Fla. 1994); Op. Att'y Gen. Fla. 90-47 (1990).

[3] *Cf.* Op. Att'y Gen. Fla. 97-70 (1997) (charges imposed by city's stormwater management utility program were service charges imposed for stormwater utility services that could lawfully be imposed on property of the State of Florida, Department of Transportation).

[4] *See* Op. Att'y Gen. Fla. 77-94 (1977) (community college not exempt from contractual franchise charge imposed by city upon a public utility, as such fee represents proportionate share of such fee or operating cost of total charges for utility services provided to and used by the community college); Op. Att'y Gen. Fla. 70-56 (1970) (state agencies required to pay franchise fee imposed by a municipality on telephone company which, pursuant to Public Service Commission regulations, passed such fee onto its customers as an increase in telephone service charge).

[5] *See* s. 3, Art. VII, Fla. Const., providing that "[s]uch portions of property as are used predominantly for educational, literary, scientific, religious or charitable purposes may be exempted by general law from taxation." *And see* s. 196.198, Fla. Stat. (educational institutions and their property exempt from taxation).

[6] *See* Op. Att'y Gen. Fla. 91-27 (1991), citing *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).

[7] 595 So. 2d 25 (Fla. 1992).

[8] *Id.* at 30.

[9] 667 So. 2d 180 (Fla. 1995).

[10] *See Board of Public Instruction of Dade County v. Little River Valley Drainage District*, 119 So. 2d 323 (Fla. 3d DCA 1960) (special assessment for drainage district benefits may be imposed upon the property of the county school board; however, lien of those assessments is not capable of enforcement, although Legislature can, by specific enactment, allow and require school funds to be used to pay off imposed special assessments); *and see* Op. Att'y Gen. Fla. 76-137 (1976) (purpose of s. 235.34, Fla. Stat., is to regulate the levying of special assessments for special benefits on school districts and for directing the payment of said assessments; statute has no application to impact fees or user charges for which school board is liable).