



To: Jorge Martinez Esteve

From: Craig E. Leen, City Attorney for the City of Coral Gables

A handwritten signature in blue ink, appearing to be "CL", is written over the name "Craig E. Leen".

RE: Legal Opinion Regarding Tax Collector and Property Appraiser's Ministerial Duties per Section 197.3632, Fla. Stat.

Date: September 16, 2015

As discussed, please see the attached memorandum providing the City's legal opinion that the City's special assessment is valid, and that the Property Appraiser and Tax Collector have a ministerial duty to proceed with the City's assessment. The assessment is based on a duly enacted City ordinance and City assessment resolution that were enacted in compliance with state law and in public hearings. Both the ordinance and the resolution have a presumption of validity. Moreover, the First District made it clear in the Escambia County case that proceeding with the assessment is not discretionary, it is ministerial and must be done.

I have also adopted this opinion as a City Attorney Opinion pursuant to section 2-201(e)(1) and (8) of the Coral Gables City Code, so this is a formal opinion and interpretation issued on behalf of the City.

Of course, as you know, I have the greatest respect for you and the County Attorney's Office. I respectfully ask that you consider this opinion and let me know if you agree or disagree. If you disagree, please let me know based on what legal authority so I may consider it. As mentioned, this a very significant issue for the City, so it will receive my top priority until I raise the matter with the Commission on Tuesday. I will be placing an item on the agenda, and will provide you a copy once it is complete.

M E M O R A N D U M

TO: Craig Leen
FROM: Heather Encinosa
DATE: September 16, 2015
RE: Tax Collector and Property Appraiser's Ministerial Duties per Section 197.3632, Fla. Stat.

ISSUE

May a property appraiser or tax collector refuse to collect the City's solid waste assessments pursuant to the Uniform Assessment Collection Act embodied in section 197.3632, Florida Statutes, when the City has complied with all required procedural steps?

EXECUTIVE SUMMARY

No. The duties of a tax collector and property appraiser pursuant to Section 197.3632, Florida Statutes, and accompanying administrative rules, are ministerial. These officers have no authority to refuse to perform their legally prescribed duties based upon their own determinations regarding the propriety of the City's solid waste assessment. So long as the City meets all required statutory procedures, the tax collector and property appraiser have the mandatory and imperative duties to accept and collect the City's solid waste assessment roll.

If these officers refuse to perform their legally prescribed duties, the City may properly pursue a mandamus action to compel performance. The City may also consider a declaratory judgment action and may assess entitlement to any monetary damages.

ANALYSIS

On May 26, 2015, the City of Coral Gables (the "City") adopted a Master Service Assessment Ordinance (Ordinance No. 2015-09) to provide for the imposition of collection of services assessments within the City. In accordance with the procedures outlined therein, on June 16, 2015, the City adopted an Initial Assessment Resolution for Solid

Waste (Resolution No. 2015-96), which initiated the process for the imposition and collection of Solid Waste Service Assessments against certain Residential Properties within the City that had failed to promptly pay the solid waste collection and disposal costs owed to the City in accordance with Article II of Chapter 54 of the City of Coral. Pursuant to the Initial Assessment Resolution, the City timely provided both published and mailed notices to all affected property owners of the assessment and the public hearing in compliance with Section 197.3632, Florida Statutes. In August 2015, the City adopted a Final Assessment Resolution for Solid Waste (Resolution No. 2015-189), which imposed solid waste service assessments against certain properties within the city that had received and been benefitted by the City's provision of solid waste collection and disposal services. Although these solid waste charges were previously billed to the affected property owners by the City and had not been previously collected on the tax bill, the City properly followed and complied with all procedural steps in both Section 197.3632, Florida Statutes, and chapter 12D-18 of the Florida Administrative Code to impose these solid waste assessments and provide for their collection pursuant to the Uniform Assessment Collection Act. The City has also previously provided all affected property owners with an opportunity to pay all past due amounts in full and notified all affected property owners that their continued failure to pay would result in any delinquent amounts from those bills being placed on the subsequent year's tax bill for that property.

Despite the City's full compliance with the legally required procedures, according to an email received from Lazaro Solis, Deputy Property Appraiser dated September 15, 2015, the Property Appraiser is currently of the opinion that delinquent special assessments cannot be collected on the tax bill.

The issue of whether a constitutional officer may refuse to collect validly imposed special assessments is not a new issue. This issue was decided by the First District Court of Appeal in Escambia County v. Bell, 717 So. 2d 85 (Fla. 1st DCA 1998). In Escambia County, the tax collector refused to collect the county's special assessment on the tax bill even though the tax collector stipulated that all the procedural requirements had been met. The tax collector was of the opinion that the lien of the assessments was not lawful and believed it to be within his discretion to refuse to collect the assessments. The trial court agreed with the tax collector and entered summary judgment against Escambia County. On appeal, however, the First District Court reversed and held as follows:

[T]he Tax Collector acting in his official capacity has the ministerial duty of placing the County's assessment in this case on the annual tax notice upon the County's compliance with the uniform collection procedures contained in section 197.3632 and Florida Administrative Code Chapter 12-18. The Tax Collector has no authority to refuse that duty based on his own determinations of the legality of the assessment or the constitutionality of any lien resulting from nonpayment of the assessment.

Escambia County, 717 So. 2d 85, 88 (Fla. 1st DCA 1998). See also R. 12D18.001, Scope ("The duties of the property appraisers and tax collectors under Section 197.3632, F.S., are ministerial and shall not be construed to authorize any levy.").

While the Escambia County case did not involve special assessments that were previously collected by a method other than the tax bill for the same year, the same logic dictates that once the City has complied with the statutory requirements of section 197.3632, Florida Statutes, neither the property appraiser nor the tax collector have the authority to question the legality of the assessment, regardless of how the assessment was originally billed. The fact that an amount equal to the delinquent assessment is added to the assessment liability of the property in a subsequent year and that total amount is collected on the tax bill should not be of legal consequence to the constitutional officers.

The concept of rolling delinquent assessment amounts onto a tax bill for collection is not unprecedented. In fact, in the case of Harris v. Wilson, 656 So. 2d 512 (Fla. 1995), the Supreme Court of Florida noted during its recitation of the facts that the solid waste special assessment at issue there was an interim assessment that was not collected on the tax bill. The delinquencies from those assessments were rolled over and collected on the subsequent year's tax bill. The Florida Supreme Court upheld the special assessment in Harris v. Wilson.

Furthermore, based on the plain language of section 197.3632, Florida Statutes, it is clear that the tax collector and property appraiser have no discretionary authority to refuse to collect non-ad valorem assessments on the tax bill, so long as the procedural requirements of section 197.3632 are met. For example, section 197.3632(9), Florida Statutes, states as follows:

A local government may elect to use the uniform method of collecting non-ad valorem assessments as authorized by this section for any assessment levied pursuant to general or special law or local government ordinance or resolution, regardless of when the assessment was initially imposed or whether it has previously been collected by another method.

§ 197.3632(9), Fla. Stat. (emphasis added).

Originally, this subsection related only to capital assessments. But, the language was amended in 1997 to include all assessments -- service and capital -- in response to an Attorney General's opinion. In Attorney General Opinion No. 92-11, the General opined that "the City of Sunrise may utilize the method set forth in s. 197.3632, F.S., to collect those special assessments levied by the city pursuant to Ch. 170, F.S., and previously collected by another method only if such assessments are for capital project assessments." Id. (emphasis added and footnote omitted). Now non ad valorem assessments that are used to fund non-capital programs (e.g., solid waste collection services) may be collected on the tax bill even when those assessments have been

previously collected by another method. Thus, the plain language of this section authorizes the placement of a delinquent assessment on the tax bill even though that assessment was previously billed using a different mechanism.

In addition, based on the definition of "non-ad valorem assessments" and the plain language of section 197.3632, any delinquent assessments that are noticed and certified in the same manner as other special assessments that are collected on the tax bill can also be collected on the tax bill without tax collector or property appraiser permission. For example, section 197.3631, declares, "Non-ad valorem assessments as defined in s. 197.3632 may be collected pursuant to the method provided for in ss. 197.3632 and 197.3635." Id. Section 197.3632(1)(d), in turn, defines "non-ad valorem assessment" as "only those assessments which are not based upon millage and which can become a lien again a homestead as permitted in s. 4, Art. X of the State Constitution." Id. The City's delinquent solid waste assessments clearly fall within this definition. Thus, the plain language of the statute does not limit the collection of non-ad valorem assessments, so long as the assessments meet the definition of "non-ad valorem assessments," and so long as, under the Escambia County v. Bell decision, the procedural requirements of section 197.3632 are met. See also R. 12D-18.003(1), Non-Ad Valorem Assessments; Method for Election to Use Section 197.3632, Florida Statutes ("By complying with the provisions of this rule section, a local government may elect to use the ad valorem method of collection for any non-ad valorem assessments, including special assessments, which may have been in existence prior to the election to use the uniform method.")

Paulk, Enga

From: Leen, Craig
Sent: Wednesday, September 16, 2015 3:07 PM
To: Paulk, Enga
Subject: Fwd: City Attorney Opinion
Attachments: FinalMemoonDelinquencies.doc; ATT00001.htm

Please publish as a City Attorney Opinion today.

Sent from my iPhone

Begin forwarded message:

From: <cleen@coralgables.com>
Date: September 16, 2015 at 12:36:30 PM EDT
To: Jorge Martinez Esteve <jme@miamidade.gov>
Subject: City Attorney Opinion

Jorge,

As discussed, please see the attached memorandum providing the City's legal opinion that the City's special assessment is valid, and that the Property Appraiser and Tax Collector have a ministerial duty to proceed with the City's assessment. The assessment is based on a duly enacted City ordinance and City assessment resolution that were enacted in compliance with state law and in public hearings. Both the ordinance and the resolution have a presumption of validity. Moreover, the First District made it clear in the Escambia County case that proceeding with the assessment is not discretionary, it is ministerial and must be done.

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Best regards,
Craig

Craig E. Leen
City Attorney