



Alachua County Attorney's Office

Michele L. Lieberman, County Attorney

MEMORANDUM

TO: Chair Pinkoson, Commissioners Baird, Byerly, Chestnut, and Hutchinson

FROM: Michele L. Lieberman, County Attorney *MLL*

DATE: May 1, 2014

SUBJECT: *Citizen Question Regarding Alachua County Public Service Tax*

On April 22, 2014, the Board referred to this office the question of whether there exists statutory authority for the levy of a utility tax on the purchase of specified utilities outside municipal limits.

Section 166.231, Fla. Stats., provides express authority for a municipality to levy such a tax for purchases made within its municipal limits. This authority extends, by operation of the Florida Constitution, to charter counties. Florida courts have consistently held that "the term 'municipality' [includes] 'charter county' unless the statute under review draws a clear distinction between the two or expresses an intent to exclude charter counties from its purview." *Palm Beach Cnty. v. Bellsouth Telecommunications, Inc.*, 819 So. 2d 876, 878 (Fla. 2d DCA 2002). *See also Stork v. Bellsouth Corp.*, 847 So. 2d 1098 (Fla. 4th DCA 2003)(charter counties have constitutional authority to impose fees where general law provides that authority to a municipality).

As it regards taxing authority, the Florida Supreme Court expressly recognized that "unless precluded by general or special law, a charter county may without more under authority of existing general law impose by ordinance any tax in the area of its tax jurisdiction a municipality may impose." *State ex rel. Volusia County v. Dickinson*, 269 So.2d 9, 11 (Fla.1972). Specifically, in *McLeod v. Orange Cnty.*, 645 So. 2d 411 (Fla. 1994), the Florida Supreme Court validated the issuance of tax revenue bonds payable from a public service tax adopted by a charter county within its unincorporated area, and in so doing upheld the authority of a charter county to impose upon its citizens within the unincorporated area the tax authorized by Section 166.31, Fla. Stats.

The County, through its adoption of the Alachua County Public Service Tax Ordinance, Chapter 39.6, imposes a tax upon each purchase of electricity, metered or bottled gas (natural, liquefied petroleum gas or manufactured), telecommunications service and water service within the unincorporated area, which tax has been in effect since October 1, 1992. There is additionally levied within the unincorporated area a tax upon each purchase of fuel oil per gallon, which levy has been in



Alachua County Public Service Tax

ELECTRIC

Gainesville Regional Utilities
Clay Electric
City of Alachua
Florida Power & Light
Duke Energy
Central Florida Electric
City of Newberry

WATER

City of Waldo
Lake Alto Estates Association
Gainesville Regional Utilities
City of Melrose
Florida Governmental Utility Authority
City of Alachua

PROPANE

Gainesville Regional Utilities
Williams
Publix
The Pantry
Suburban Propane
Home Depot
Amerigas
Flo Gas Corp.
Ferrell Gas
Davis Gas
Walmart
Kmart
Walgreens