





# *Alachua County Attorney's Office*

Sylvia E. Torres, County Attorney

## MEMORANDUM

TO: Sylvia Torres, County Attorney 

FROM: David Forziano, Senior Assistant County Attorney 

DATE: July 6, 2020

Re: Proposed Trunk Radio System Surtax – Basis for City of Gainesville's opinion that the proceeds of the surtax may be used to pay its existing debt

On April 11, 2020, the Alachua County Board of County Commissioners (“County Board”) adopted an amendment to Ordinance 16-06, that would temporarily increase the imposition of the existing local government infrastructure surtax for a one year period beginning January 1, 2021 and ending December 31, 2021 for the purpose of designing, constructing and improving the public safety trunking radio system (“TRS”) and to acquire property interests related thereto. Pursuant to section 212.055(2)(a), Florida Statutes, in order to become effective, said amendment must be approved by referendum of a majority of the electors in Alachua County. The proceeds from any such surtax must be distributed to the County and all the municipalities within the County, either pursuant to a formula established by interlocal agreement between the County and the City of Gainesville or in accordance with the formula provided in section 218.62, Florida Statutes.

Prior to and during the joint meeting held on May 29, 2020 between the Board and the City of Gainesville Commission, representatives of the City stated that they believed that the City had a legal basis to use the proceeds of the surtax to pay approximately \$5M in existing City debt resulting from the TRS improvements it made in 2018. That position appears to be inconsistent with section 212.055, Florida Statutes. Section 212.055(2), Florida Statutes, prescribes how the proceeds of the surtax may be used. With regards to serving debt, section 212.055(2)(e), Florida Statutes, states, in pertinent part, that “...counties, and municipalities receiving proceeds under the provisions of this subsection may pledge such proceeds for the purpose of servicing new bond indebtedness incurred pursuant to law.” (bolding and underlining emphasis added). A general rule of statutory construction is that the mention of one thing implies the exclusion of things not mentioned; hence, where a statute enumerates the things upon which it is to operate or forbids certain things, it is ordinarily to be construed as excluding from its operation all things not expressly mentioned. *Schoeff v R.J. Reynolds Tobacco Co.*, 232 So.3d 294 (Fla. 2017), citing *Thayer v State*, 335 So.2d 815 (Fla. 1976); *Dobbs v Sea Isle Hotel*, 56 So. 2d 341 (Fla. 1952). Thus, specific enumeration in section 212.055(2)(e), Florida Statutes, that the proceeds can be used to service new debt implies that it cannot be used to service existing debt. Furthermore,

section 212.055(2)(d), Florida Statutes, states, in pertinent part, that “[C]ounties, as defined in s 125.011, and charter counties, may, in addition, use the proceeds or interest to retire or service indebtedness incurred for bonds issued before July 1, 1987, for infrastructure purposes, and for bonds subsequently issued to refund such bonds.” As this provision addresses when and which entities may use the proceeds to pay existing debt, the rule of statutory construction, explained above, as applied to this language means that, if these counties may use the surtax proceeds to pay its existing debt, other entities may not. Furthermore, this provision is limited to: (i) counties defined in section 125.011 (a limited, articulated group of counties), and (ii) charter counties. When read to together, sections 212.055(2)(d) and 212.055(2)(e), show a legislative intent that the proceeds of the surtax cannot be used to service debt incurred prior to the levy of the surtax unless that debt was incurred by an eligible county before July 1, 1987. This is no comparable provision for municipalities or for debt incurred on or after July 1, 1987. So, statutory construction would imply that municipalities may not use the proceeds of the surtax to pay existing debt under any circumstance.

In order to more fully evaluate the City’s position, it is necessary to understand the factual and legal basis of its position. The County has made multiple request to the City, both prior to and subsequent to the May 29th joint meeting, asking for the basis for its opinion that the City could use the proceeds of the surtax to pay its existing debt. To date, the County has not receive any basis from the City. Without the benefit of its opinion, I am of the opinion that the City may not retire its previously incurred debt with these surtax revenues.

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