



Legislation Text

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Collection of Stormwater Utility Fees from the Department of Transportation

The City Commission authorize the City Attorney's Office to file a lawsuit against the State of Florida Department of Transportation to judicially declare the City's stormwater fee is a valid utility fee, to collect past stormwater fees owed by the State of Florida Department of Transportation to the City, and to compel future payment of the stormwater fees.

The Florida Department of Transportation facility located on Waldo Road refuses to pay its stormwater utility fees. The legal staff for the Department of Transportation contends that the fee is not a true fee, but in the nature of a special assessment or a tax, for which the State is not liable. The Department of Transportation's past bills total \$72,120 over the last four years.

In July, 1997, legal counsel for the Department of Transportation asked the Attorney General's Office for an advisory opinion as to whether the City's utility fee was a fee, special assessment, or tax. In October, 1997, the Attorney General's Office issued the opinion. It found that "[T]he charges imposed by the City of Gainesville's Stormwater Management Utility Program represent a service charge imposed for stormwater utility services and may be lawfully levied against property of the State of Florida, Department of Transportation". A copy of the opinion is attached as Exhibit "A".

The Attorney General's Office found several factors that make the City's stormwater charge a valid fee as opposed to a tax or special assessment. First, the legislature specifically authorized municipalities to set up a stormwater program as a utility. Secondly, a property owner who does not use stormwater service does not pay for it, and property owners who do use the service, only pay for how much service is used. Third, non-payment of the stormwater fee is handled in the same manner as non-payment of any of the utility services, it does not become a lien on the property. Finally, the proceeds from the stormwater fee are deposited into the stormwater fund and used only for those purposes.

After that opinion was rendered, the City Attorney's Office contacted the legal counsel for the Department of Transportation to determine whether it would begin paying the fees. On December 30, 1997, legal counsel for the Department of Transportation responded by stating "the Department will not voluntarily pay the stormwater fees". A copy of this letter is attached as Exhibit "B". Since that time, the City Manager has contacted the secretary of the Department of Transportation asking for a reconsideration of that position in light of the fact that DOT pays stormwater fees in at least one other jurisdiction, Tallahassee. As reflected in that letter attached as Exhibit "C", DOT has again refused to pay the City's stormwater fee.

It is the recommendation of management and the City Attorney's Office that a lawsuit be filed against the State of Florida to judicially declare that the City's stormwater fee is a valid utility fee, to collect past stormwater fees owed by the Department to the City, and to compel future payment of the stormwater fees.