

Referrals
6/25/19

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FINANCE, AND
AUDIT STANDING
COMMITTEE**



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TO: Detroit City Council

FROM: David Whitaker, Director
Legislative Policy Division

DATE: June 19, 2019

RE: **Supplemental Report on Economic Hardship Exemption in Special Assessment Districts**

The Legislative Policy Division (LPD) has received and reviewed the opinion of the Law Department relative to a proposed ordinance provision allowing for an economic hardship exemption in Special Assessment Districts. LPD concurs with part of the Law Department's assessment regarding unpaid special assessments once they have reached the collection process under the General Property Tax Act (GPTA). We disagree with the finding that the special assessment is inherently subject to the GPTA prohibiting the allowance of an economic hardship provision in the ordinance, which was the heart of the joint assignment to our respective offices. As stated in our report of June 5, 2019, LPD finds both State law and the City's Code silent on this issue. The need to protect vulnerable property owners by amending the current special assessment ordinance in a manner that provides relief to those in poverty as qualified under the Board of Review guidelines is available, as a matter of public policy.

The City of Detroit's authority to develop an ordinance providing for Special Assessment Districts is derived from the Home Rule City Act, MCL 117.5i which provides in pertinent part:

(1) Whether or not authorized by its charter, a city with a population of more than 600,000 may provide by ordinance a procedure to finance by special assessments the provision by private contractors of snow removal from streets, mosquito abatement, and security services. The ordinance shall authorize the use of petitions to initiate the establishment of a special assessment district. The record owners of not less than 51% of the land comprising the actual special assessment district must have signed the petitions.

Pursuant to the authority granted under MCL 117.5i, the City developed an ordinance that established a process whereby segments within our City could elect to finance by special assessments the provision by private contractors of snow removal from streets, mosquito abatement, and security services. Nothing in this grant of authority prohibits the City from providing in its ordinance procedures to finance special assessments, a manner in which those persons undergoing financial hardship can be exempted, so long as it does not conflict with the other existing laws. The special assessment is not a tax and is not authorized by the GPTA. In *Kadzban v City of Grandville*, 442 Mich. 495, 502 N.W.2nd 299 (1993), the Michigan Supreme Court stated “A special assessment is a levy upon property within a specified district. Although it resembles a tax, a special assessment is not a tax.” Id at 500.

In *Knott v. City of Flint*, 363 Mich. 483, 109 N.W.2d 908 (1961) the Court stated:

It has been repeatedly held by this Court, and by other courts as well, that special assessments for local improvements on the basis of benefits received are not taxes, and that an exemption from taxation under a general law of the State will not relieve from liability for municipal assessments of the character in question. Id at 497.

Understanding that the special assessment is not a tax is critical to understanding how the GPTA applies. A similar construct exist with the solid waste fee, which is also not a tax, however, just as in the instance of unpaid special assessments, the collection of the unpaid solid waste fees may be subject to collection under the GPTA. However the collection of the unpaid solid waste fees under GPTA did not and does not prohibit the City from creating exceptions to those required to pay. The City’s Solid Waste Ordinance, Section 22-2-54(a)(1) provides for a hardship condition exempting those who meet the criteria. If the person meets the criteria for the full exemption of the solid waste fee, results in no solid waste fee to be collected under GPTA. The City is able to provide this exemption to the solid waste fee because the States preemptive jurisdiction regarding taxes under the GPTA (which prohibits any tax exemptions not granted by State law) does not apply to non-tax matters such as fees or special assessments.

LPD reviewed the Law Department’s reliance on the GPTA as it relates to the process for collection of special assessment where the Wayne County Treasurer (WCT), is acting as the “collecting officer” as set forth under MCL 211.55:

A township treasurer or **other collecting officer may include** as a delinquent tax any unpaid special assessment which is delinquent on the last day of February in the delinquent taxes returned to the county treasurer the next day pursuant to this section. A delinquent special assessment included as a delinquent tax pursuant to this section **shall, after return to the county treasurer, be a valid tax** for all purposes under this act. (Emphasis added)

When analyzing this language LPD finds, first, the GPTA does not mandate that the unpaid special assessment be included as a delinquent tax. It is not mandatory that the special assessment be collected by the WCT as a delinquent tax. Secondly, it is not until “after return to the county treasurer, shall it be deemed a valid tax for purposes under the GPTA. In essence, it is

not a tax as determined under GPTA prior to the WCT's acceptance which must occur as delinquent on the last day of February. Prior to this date, the GPTA does not apply.

It is only after the last day of February when the WCT has determined to include the unpaid special assessment as a delinquent tax does the process for collection of taxes under the GPTA apply to special assessments. Until then, "a special assessment...; it is a specific levy designed to recover the costs of improvements that confer local and peculiar benefits upon property within a defined area." (*Kadzban*, Id at 500). Understanding that the special assessment is not a tax per se is critical to the manner in which the special assessment can be treated. As indicated above there is nothing in the Home Rule City Act prohibiting the City's special assessment ordinance from including a hardship exemption that can be applied prior to any unpaid special assessment being included in the WCT delinquent tax collection under MCL 211.55. LPD also looked at the Charter provision Section 8-604, *Assessment Lien*, cited in the Law Department's opinion. This provision provides:

From the **date of confirmation** of any roll levying any special assessment, the full amount of the assessment and all interest thereon shall constitute a lien on the property subject thereto and that amount shall also be a debt of the person to whom assessed until paid and, in case of delinquency, may be collected as delinquent city property taxes. (Emphasis added)

This provision calls for the full amount of the assessment and all interest thereon to constitute a lien until paid, and may be collected as delinquent city property taxes. The language requires the full amount of the assessment to be paid, if unpaid, it may be collected as delinquent property taxes under the GPTA. However, like the GPTA provision under MCL 211.55, there is a time factor that triggers the Charter provision under Section 8-604. The assessment lien is not effective until the date of confirmation of any roll levying any special assessment. The "date of confirmation" is the date endorsed by the City Clerk after City Council confirms the special assessment roll as set forth in Section 18-12-133(b) of the City Code which provides:

Once the City Council confirms the special assessment roll, the City Clerk shall endorse on the special assessment roll the date of the confirmation, and shall deliver copies of the assessment roll to the Board of Assessors, Treasurer, and sponsoring DNIO. The Treasurer shall proceed to collect the special assessment, and shall continue to do so annually during the Term of the SAD. The Treasurer may invoice the record owners directly for the special assessment, or the Treasurer may include the special assessment as a separate item on the summer or winter tax bill. If the nature of a service is such that a periodic redetermination of cost will be necessary without a change in the SAD boundaries, the Treasurer shall include with, or send contemporaneously with, the invoice or property tax bill a statement that the cost redetermination(s) may be made without further notice to Record Owners or parties in interest in the property, subject to the limitations in section 18-12-134(b).

Upon the date in which the special assessment roll is confirmed, all assessments on the assessment roll are final and conclusive as set forth under Section 18-12-133(c). However, there is nothing in the Charter or law prohibiting the ordinance from providing a hardship exemption prior to the "date of confirmation" of the special assessment roll. Prior to the City Council's

confirmation of the special assessment roll the Board of Assessor's are to provide a "tentative special assessment roll pursuant to Section 18-12-130 to City Council and thereafter a public hearing is to be held prior to City Council's confirmation of the special assessment rolls. As this entire process is outlined by ordinance, amendments can be provided that allow for a determination of those eligible for a poverty exemption prior to the "date of the confirmation".

Therefore, based upon the information set forth above it is LPD's opinion that an amendment to the Special Assessment District ordinance allowing for a poverty hardship exemption is not prohibited by the GPTA if applied before the WCT accepts the unpaid special assessment. In addition, the Charter provision Section 8-604 *Assessment Lien*, would not prohibit an amendment to the Special Assessment District ordinance allowing for a poverty hardship exemption if applied before the "date of confirmation" of the special assessment roll.

If we can be of further assistance, please feel free to call upon us.