

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

CITY OF SEBASTIAN,)
)
 Petitioner,)
)
 vs.)
)
 INDIAN RIVER BOARD OF COUNTY)
 COMMISSIONERS,)
) Case No. 01-3508
 Respondent,)
)
 and)
)
 CITY OF VERO BEACH,)
)
 Intervenor.)
 _____)

RECOMMENDED ORDER

Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing on October 15, 2001. The Administrative Law Judge participated by telephone in Tallahassee, and the parties and witness participated by telephone in Vero Beach.

APPEARANCES

For Petitioner: Rich Stringer
City Attorney
City of Sebastian
1225 Main Street
Sebastian, Florida 32958

For Respondent: William G. Collins II
Deputy County Attorney
Indian River County
1840 25th Street
Vero Beach, Florida 32960

For Intervenor: Charles P. Vitunac
Assistant City Attorney
City of Vero Beach
1053 20th Place
Vero Beach, Florida 32960

STATEMENT OF THE ISSUE

The issue is whether Respondent's use of the 1998 percentages to distribute the local option gas tax revenues for fiscal year ending 2001 is contrary to applicable law.

PRELIMINARY STATEMENT

By Appeal Pursuant to Fla. Stat. 336.025(5)(b) served May 18, 2001, Petitioner protested to the Administration Commission the distribution of the local option gas tax revenues for fiscal year ending 2001. The appeal challenges the use of the 1998 distribution percentages, rather than the 2000 distribution percentages allegedly required by the Indian River County Code.

The appeal alleges that, since 1986, local governments of Indian River County have distributed the local option gas tax pursuant to a formula that has remained unchanged in interlocal agreements and the Indian River County Code. The agreements allegedly provide that the parties shall readdress the distribution formula every two years, but the agreements

allegedly fail to provide how often the parties are to recalculate the distribution percentages.

The appeal alleges that the Indian River County Code requires review every two years of the "method" of distribution of the taxes, but supplies a formula for the recalculation of the distribution formula "each year."

However, the appeal claims that the parties have not adjusted the distribution percentages each year and failed to adjust the percentages from 1996 through 1999. The appeal asserts that, after Petitioner protested these omissions in March 2000, the parties recalculated the distribution percentages in October 1998, but did not implement the new distribution percentage until fiscal year ending 2000.

The appeal alleges that, in the summer of 2000, Petitioner insisted that the parties recalculate the distribution percentages annually, but Respondent used the 1998 percentages for fiscal year ending 2001. This appeal seeks the recalculation of distribution percentages for the allocation of the local option gas tax revenues for fiscal year ending 2001.

By letter dated July 25, 2001, the City of Fellsmere concurred with the appeal of Petitioner. However, the City of Fellsmere did not participate as a party in this case.

By letter dated September 4, 2001, the Administration Commission forwarded the file to the Division of Administrative Hearings for further proceedings.

By Motion to Intervene filed September 13, 2001, Intervenor requested leave to participate as a party in opposition to the relief sought by Petitioner. By Order entered the following day, the Administrative Law Judge granted Intervenor leave to intervene.

At the hearing, the parties stipulated to Joint Exhibits 1-19, which were all admitted. Respondent called the sole witness in the case. Petitioner and Intervenor filed proposed recommended orders by October 24, 2001. The parties did not order a transcript.

FINDINGS OF FACT

1. By Interlocal Agreement Between Indian River County, Florida and City of Sebastian, Florida, dated June 25, 1996 (Interlocal Agreement), Petitioner and Respondent agreed upon a distribution schedule for the county and five municipalities within the county of the local option gas tax (Gas Tax). The schedule was based on a formula weighing equally each local government's lane miles of road, transportation expenditures over the past five years, and population (Formula). The Interlocal Agreement, which expires in 2026, provides that the

"[F]ormula shall be reviewed every two years starting September 1, 1998."

2. Indian River County Code (Code) Section 209.04 also addresses the distribution of the Gas Tax. Section 209.04(a) describes the Formula and adds: "The method of distribution of the [Gas Tax] revenues shall be reviewed and a public hearing held at least every two (2) years by the parties to the agreement."

3. However, Code Section 209.04(b) provides in part:

Each year, during the term of the imposition of this tax, the division and distribution of tax proceeds under this article shall be evaluated and recalculated based upon the . . . [F]ormula: [Formula omitted].

By August 15 of each year, the county shall provide the Florida State Department of Revenue a certified copy of the distribution proportions established by interlocal agreement under this section. The revised distribution of tax proceeds shall become effective on September 1 of each year.

4. Historically, the local governments of Indian River County may have used reporting deadlines for Gas Tax data that did not conform with the deadlines imposed by the Department of Revenue, but the local governments have since changed their reporting deadlines and eliminated any inconsistencies. However, such inconsistencies do not relieve the parties of their responsibilities under the Interlocal Agreement and Code in distributing the Gas Tax revenues.

5. Intervenor describes the situation well in its proposed recommended order. Historically, the local governments of Indian River County did not worry about the distribution formula due to their equal, and generally low, growth rates, but disparate growth rates between Petitioner and Intervenor have eroded this easy custom. Disdaining any attempt to wring from the Code an interpretation that suits its needs, Intervenor instead contends only that it relied on the current distribution formula in preparing its current budget. Intervenor claims that it would not be good budget practice and, thus, would be contrary to the public interest, to require it to revise its budget in the middle of the year due to reduced Gas Tax revenues.

6. As Intervenor implicitly concedes, the Code requires an annual recalculation of the distribution percentage, applying current data to the Formula and then distributing the Gas Tax revenues accordingly. Apparently, the effect of this recalculation for fiscal year ending 2001 would be to increase Petitioner's share by about \$40,000, evidently largely at the expense of Intervenor. Although Intervenor's budget will be disturbed by the immediate implementation of this recalculation, the Code does not permit a contrary interpretation, and Intervenor was aware prior to adopting the current budget that Petitioner was insisting that the parties conform to the law in

dividing the Gas Tax revenues. And it nearly goes without saying that the Formula is an equitable allocation of these revenues based on the respective needs of the local governments of Indian River County.

CONCLUSIONS OF LAW

7. The Division of Administrative Hearings has jurisdiction over the subject matter. Sections 120.57(1) and 336.025(5)(b), Florida Statutes. (All references to Sections are to Florida Statutes.)

8. Although Section 336.025 emphasizes the role of interlocal agreements in distributing the Gas Tax revenues, the local governments of Indian River County have implicitly agreed upon the distribution of these revenues, and they have documented this agreement in the Code. The Code clearly establishes the Formula, and it clearly requires annual recalculation of the Formula. No good reason justifies Respondent's refusal to recalculate each local government's share of the Gas Tax revenues for fiscal year ending 2001. Respondent should therefore promptly recalculate the distribution percentages and inform the Department of Revenue of the new percentages, so the Department of Revenue can make retroactive reallocations for fiscal year ending 2001 at a rate that is fair to both Petitioner and Intervenor.

RECOMMENDATION

It is

RECOMMENDED that the Administration Commission enter a final order sustaining Petitioner's appeal of the distribution of the Gas Tax revenues for fiscal year ending 2001, requiring Respondent to recalculate each local government's distribution percentage in accordance with the Interlocal Agreement and Code, and providing for an equitable adjustment to Gas Tax revenues that the Department of Revenue is currently distributing to the local governments of Indian River County.

DONE AND ENTERED this 16th day of November, 2001, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
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Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of November, 2001.

COPIES FURNISHED:

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NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this recommended order. Any exceptions to this recommended order must be filed with the agency that will issue the final order in this case.