Tourist development tax --tourist industry reps

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Subject:
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Mr. A. Bryant Applegate
County Attorney
Seminole County
1101 East First Street
Sanford, FL 32771

Dear Mr. Applegate:

This office has received your inquiry on behalf of the Board of County Commissioners of Seminole County (the "County"), asking substantially the following question:

> May the County expend tourist development tax revenue to pay the cost of travel to the County, including airfare, incurred by travel writers, tour brokers, and other persons connected with the tourist industry in connection with such persons' attendance at promotional activities or events put on by the Seminole County Economic Development Office, acting as the County's tourism promotion agency?

In sum:

> Section 125.0104(9)(c), Florida Statute does not authorize the agency's payment of the cost of travel to and from the County incurred by travel writers, tour brokers, or other persons connected with the tourist industry to attend promotional activities or events put on by the County's tourist promotion agency.

The Local Option Tourist Development Act, section 125.0104, Florida Statutes, authorizes counties to impose a tax on short-term rentals of living quarters or accommodations within the county (with certain exceptions not pertinent here). With respect to the use of tourist development tax funds to pay for travel expenses, the first sentence of section 125.0104(9)(a), Florida Statutes, authorizes a tourism promotion agency to "[p]rovide, arrange, and make expenditures for transportation, lodging, meals, and other reasonable and necessary items and services for such persons, as determined by the head of the agency, in connection with the performance of promotional and other duties of the agency." "Promotion" is defined, in section 125.0104(2)(b)1., to mean "marketing or advertising designed to increase tourist-related business activities." Section 125.0104(9) further provides that travel expenses other than those described as exceptions in that subsection "shall be as provided in s. 112.061."

With respect to travel paid for with public funds, section 112.061, Florida Statutes, establishes a generally applicable statutory framework reflecting the Legislature's expressed intent to "establish standard travel reimbursement rates, procedures, and limitations, with certain justifiable exceptions and exemptions, applicable to all public officers, employees, and authorized persons whose travel is authorized and paid by a public agency." Subsection (1)(b) of section 112.061 provides that, to "preserve the standardization established by this law," its provisions "shall prevail over any conflicting provisions in a general law, present or future, to the extent of the conflict; but if any such general law contains a specific exemption from this section, including a specific reference to this section, such general law shall prevail, but only to the extent of the exemption." 1 Section 125.0104(9), to the extent of its terms, provides such an exemption. Thus, to the extent section 125.0104(9) conflicts with section 112.061, the former's provisions govern the latter. Because of the interplay between section 125.0104(9) and 112.061 and because they are closely related, the two statutes should be read *in pari materia. 2*

Against this backdrop, the County has asked whether section 125.0104(9)(a) authorizes payment of transportation expenses, including airfare, to bring tourist industry representatives to attend County tourism activities (when such travelers are neither performing agency duties nor serving as agency consultants or advisers). It is clear the transportation expenses for tourist industry representatives would not be authorized under section 112.061 because such individuals are not public employees and are not performing agency duties. Thus, tourist development tax funds may only be used for such expenses if authorized by section 125.0104.

Paragraph (9)(a) provides a tourism development agency is authorized to:

> Provide, arrange, and make expenditures for transportation, lodging, meals, and other reasonable and necessary items and services for such persons, as determined by the head of the agency, in connection with the performance of promotional and other duties of the agency. However, entertainment expenses shall be authorized only when meeting with travel writers, tour brokers, or other persons connected with the tourist industry. All travel and entertainment-related expenditures in excess of $10 made pursuant to this subsection shall be substantiated by paid bills therefor. Complete and detailed justification for all travel and entertainment-related expenditures made pursuant to this subsection shall be shown on the travel expense voucher or attached thereto. Transportation and other incidental expenses, other than those provided in s. 112.061, shall only be authorized for officers and employees of the agency, other authorized persons, travel writers, tour brokers, or other persons connected with the tourist industry when traveling pursuant to paragraph (c). All other transportation and incidental expenses pursuant to this subsection shall be as provided in s. 112.061.

(Emphasis added.) The fifth sentence authorizes the payment of transportation and other incidental expenses, other than those provided in section 112.061, for a series of enumerated categories of persons. Paragraph 9(a) is clear that travel expenses may only be incurred for "other persons connected with the tourist industry" when those persons are "traveling pursuant to paragraph (c)". To answer your question as to travel writers and tour brokers, one must

determine whether the qualifying words at the end of the fifth sentence, “when traveling pursuant to paragraph (c),” apply only to “other persons connected with the tourist industry,” or to all travelers enumerated in the series.

“The starting point for any statutory construction issue is the language of the statute itself – and a determination of whether the language plainly and unambiguously answers the question presented.” *State v. Peraza*, 259 So. 3d 728, 731 (Fla. 2018). Where possible, effect must be given to all statutory provisions and related provisions must be construed in harmony with one another. *Id.* Here, there are two plausible readings of the fifth sentence of section 125.0104(9)(a). Under one reading, the qualifying phrase limiting expenses to those “traveling pursuant to paragraph (c)” would only apply to the last category of persons enumerated in the series, “other persons connected with the tourist industry.” Under that reading, tourist development tax funds could be used for “transportation and other incidental expenses” of travel writers and tour brokers if compliant with the remainder of paragraph 9(a), regardless of whether the travelers were traveling pursuant to paragraph 9(c). This reading would permit the payment of expenses that are the subject of your request.

Under the second plausible reading, the qualifying phrase would apply to all categories of persons enumerated in the series. Under such a reading, expenditure of tourist development tax funds for payment of travel expenses for any category of persons in the series would not be permitted unless the traveler was traveling pursuant to paragraph 9(c). Paragraph 9(c) provides a tourism development agency is authorized to:

> Pay by advancement or reimbursement, or by a combination thereof, the actual reasonable and necessary costs of travel, meals, lodging, and incidental expenses of officers and employees of the agency and other authorized persons when meeting with travel writers, tour brokers, or other persons connected with the tourist industry, and while attending or traveling in connection with travel or trade shows. With the exception of provisions concerning rates of payment, the provisions of s. 112.061 are applicable to the travel described in this paragraph.

Subsection 9(c) thus authorizes payment for two categories of persons—“officers and employees of the agency” and “other authorized persons” —where two conditions are met. First, those persons must be “meeting with travel writers, tour brokers, or other persons connected with the tourist industry”. Second, the travel must occur “while attending or traveling in connection with travel or trade shows.” The phrase “other authorized persons” uses a term, “authorized person,” defined in section 112.061(2) to include persons “other than a public officer or employee…who is authorized by an agency head to incur travel expenses in the performance of official duties” and “a person who is called upon by an agency to contribute time and services as a consultant or adviser.” § 112.061(2)(e), Fla. Stat. (2019). It is thus, in theory, possible that a travel writer or tour broker could be authorized by a tourist development agency to travel to a travel or trade show on behalf of the agency to meet with other travel writers, tour brokers or persons connected with the tourist industry, to promote tourism in the agency’s locale. Under those circumstances, the travel writer or tour broker would be acting with the agency’s authorization or as the agency’s consultant and performing official duties.

Because either reading is plausible based on the plain language, it is appropriate to apply the canons of statutory interpretation. Two competing interpretive canons could apply.

The doctrine of the last antecedent. The last antecedent canon applies when, "following an enumeration in series, a qualifying phrase will be read as limited to the last of the series when it follows that item without a comma or other indication that it relates as well to those items preceding the conjunction." 3 Thus (for example), absent some "other indication," the qualifying phrase contained in paragraph (9)(a)—"when traveling pursuant to paragraph (c)"—would apply only to "other persons connected with the tourist industry." While the last-antecedent rule 4 "'is another aid to discovery of intent or meaning,'" and "construing a statute in accord with the rule is 'quite sensible as a matter of grammar,'" 5 it "'is not inflexible and uniformly binding'"; 6 "is not an absolute";7 and "can assuredly be overcome by other indicia of meaning."8 Nor can "the doctrine…be applied in a way that ignores the plain reading of the language."9 Thus, "'[w]hen several words are followed by a clause which is applicable as much to the first and other words as to the last, the natural construction of the language demands that the clause be read as applicable to all.'"10

The "series-qualifier canon." This canon applies the "presumption that when there is a straightforward, parallel construction that involves all nouns or verbs in a series, a prepositive or postpositive modifier normally applies to the entire series."11 For example, in *Mendelsohn v. State Dep't of Health*, the First District held the phrase "relating to the Medicaid program", when separated by a comma, applied to all items in the series.12 Applying this canon, if the post-positive adverbial qualifying phrase contained in paragraph (9)(a)—"when traveling pursuant to paragraph (c)"—is equally applicable to all the enumerated persons when incurring expenses "other than as provided in s. 112.061," then the modifier would apply to all of them.

While the insertion of a comma before the post-positive modifier in the fifth sentence of paragraph 9(c) would make the disposition clearer, applying the series-qualifier canon is more appropriate here, given the context. There are several indications in subsection (9) that the subject sentence in paragraph (a) contains a parallel series of nouns, and that the post-positive modifier, "when traveling pursuant to paragraph (c)," should apply to all items in the series.

First, in its three other uses in section 125.0104 of the grouping "travel writers, tour brokers, or other persons connected with the tourist industry," the Legislature appears to have placed all these tourist industry participants on a parallel footing. It is reasonable to apply a consistent interpretation to them all. It would seem illogical to apply the limitation only to "other persons connected to the tourist industry" and not to travel writers or tour brokers.

Second, the use of the limiting phrase in the sentence "shall only be authorized" prior to the enumeration in the series makes clear the sentence is to be a limitation. Applying the limiting post-positive modifier to all items in the series furthers this purpose.

Third, the qualifier appears to be equally applicable to each category of persons in the entire series of nouns because, with respect to all such persons, "the actual reasonable and necessary costs" of travel and incidental expenses expressly authorized in paragraph (9)(c) meet the description, in paragraph 9(a), of not being otherwise "provided" under section 112.061. In fact, the Legislature appears to have underscored this intent in paragraph (9)(a) by admonishing, in

the very next sentence, that "[a]ll other transportation and incidental expenses pursuant to this subsection shall be as provided in s. 112.061." Thus, it is my opinion that the County may only use tourist development tax funds to pay for transportation and other incidental expenses not otherwise permitted by section 112.061 for "travel writers, tour brokers or other persons connected with the tourist industry" when such persons are traveling pursuant to section 125.0104(9)(c).

Paragraph (9)(c) does not allow a tourist promotion agency to use tourist development tax funds to pay for the cost of travel to and from the County incurred by travel writers, tour brokers, or other persons connected with the tourist industry (when such travelers are neither performing agency duties nor serving as agency consultants or advisers) to attend promotional activities or events put on by the County's tourist promotion agency. The cost of shared transportation used by agency officers, employees, and other authorized persons when meeting with one or more travel writers, tour brokers, or other persons connected with the tourist industry may be paid with tourist development tax funds. The cost of airfare and other transportation expenses incurred by travel writers, tour brokers, or other persons connected with the tourist industry to attend such meetings (who, in undertaking that travel, are not, themselves, fulfilling duties in furtherance of the official business of the local tourist development agency) may not.

Based on the foregoing, it is my opinion that the County may not expend tourist development tax revenue to pay the cost of travel to and from the County, including airfare, incurred by travel writers, tour brokers, and other persons connected with the tourist industry in connection with such persons' attendance at promotional activities or events put on by the County's tourist promotion agency.

Sincerely,

Ashley Moody
Attorney General

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1 The remaining applicable provisions of section 112.061 specify, among other things, that no request for travel to be paid for by the agency shall be authorized or approved "unless it is accompanied by a signed statement by the traveler's supervisor stating that such travel is on the official business of the state and also stating the purpose of such travel." § 112.061(3)(a), Fla. Stat. (2019). Additionally, "[t]ravel expenses of travelers shall be limited to those expenses necessarily incurred by them in the performance of a public purpose authorized by law to be performed by the agency and must be within the limitations prescribed by this section." § 112.061(3)(b), Fla. Stat. (2019).

2 *Bank of New York Mellon v. Glenville*, 252 So. 3d 1120, 1128 (Fla. 2018).

3 *State ex rel. Owens v. Pearson*, 156 So. 2d 4, 6 (Fla. 1963).

4 *Kasischke v. State*, 991 So. 2d 803, 812 (Fla. 2008) (quoting 2A Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 47:33 (7th ed. 2007)).

5 *Barnhart v. Thomas*, 540 U.S. 20, 26 (2003) (quoting *Nobelman v. American Savings Bank*, 508 U.S. 324, 330 (1993)).

6 *Kasischke*, 991 So. 2d at 812 (quoting 2A Norman J. Singer & J.D. Shambie Singer, Statutes and Statutory Construction § 47:33 (7th ed. 2007)).

7 *Barnhart*, 540 U.S at 26.

8 *Id*.

9 *Penzer v. Transp. Ins. Co.*, 29 So. 3d 1000, 1007 (Fla. 2010).

10 *Kasischke*, 991 So. 2d at 812 (quoting *Porto Rico Ry., Light & Power Co. v. Mor*, 253 U.S. 345, 348 (1920)).

11 Antonin Scalia & Bryan A. Garner, Reading Law: The Interpretation of Legal Texts 147 (2012); Black's Law Dictionary (11th ed. 2019). The series-qualifier canon is also termed the ”prepositive/postpositive-qualifier canon” or the “prepositive/postpositive-modifier canon.” *Id*.

12 68 So. 3d 965 (Fla. 1st DCA 2011).