Public Funds -- Administrative Agencies

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Subject:
Public Funds -- Administrative Agencies

Mr. Paul R. Gougelman
General Counsel
Florida Metropolitan Planning Organization
Advisory Council
200 East Broward Boulevard, Suite 1900
Fort Lauderdale, Florida 33301

RE: PUBLIC FUNDS – ADMINISTRATIVE AGENCIES – TRANSPORTATION – expenditure of public funds for refreshments. s. 339.175, Fla. Stat.

Dear Mr. Gougelman:

As general counsel to the Florida Metropolitan Planning Organization Advisory Council (MPOAC), you ask substantially the following:

Does the MPOAC have the authority to purchase refreshments for meetings, workshops, and seminars with funds received as a federal grant?

In sum:

The MPOAC is not authorized by state law to purchase refreshments for meetings, workshops, and seminars with funds it has received from a federal grant.

While you have posed three separate questions using the terms “necessary and implied power,” as well as “express power” and whether supremacy of federal law controls, this office will address only whether the council has the authority under state law to pay for such expenses.[1]

Section 339.175(11), Florida Statutes, creates the Metropolitan Planning Organization Advisory Council to “augment, and not supplant, the role of the individual M.P.O.’s in the cooperative transportation planning process…”[2] Section 339.175(11)(c), Florida Statutes, enumerates the powers and duties of the MPOAC to:

“1. Enter into contracts with individuals, private corporations, and public agencies.
2. Acquire, own, operate, maintain, sell, or lease personal property essential for the conduct of business.
3. Accept funds, grants, assistance, gifts, or bequests from private, local, state, or federal sources.
4. Establish bylaws by action of its governing board providing procedural rules to guide its

proceedings and consideration of matters before the council, or, alternatively, adopt rules pursuant to ss. 120.536(1) and 120.54 to implement provisions of law conferring powers or duties upon it.
5. Assist M.P.O.'s in carrying out the urbanized area transportation planning process by serving as the principal forum for collective policy discussion pursuant to law.
6. Serve as a clearinghouse for review and comment by M.P.O.'s on the Florida Transportation Plan and on other issues required to comply with federal or state law in carrying out the urbanized area transportation and systematic planning processes instituted pursuant to s. 339.155.
7. Employ an executive director and such other staff as necessary to perform adequately the functions of the council, within budgetary limitations. The executive director and staff are exempt from part II of chapter 110 and serve at the direction and control of the council. The council is assigned to the Office of the Secretary of the Department of Transportation for fiscal and accountability purposes, but it shall otherwise function independently of the control and direction of the department.
8. Adopt an agency strategic plan that prioritizes steps the agency will take to carry out its mission within the context of the state comprehensive plan and any other statutory mandates and directives."

As a statutorily created entity, the council may only exercise such powers as have been expressly granted by statute or must necessarily be exercised in order to carry out an express power.[3] Moreover, it is well settled that any reasonable doubt as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof.[4]

You state that the council has been advised by the Florida Department of Transportation that reimbursement for the cost of refreshments would likely not be acceptable. This advice supposedly originated from the Department of Financial Services (DFS) and was grounded in the "Reference Guide for State Expenditures" (guide), a publication prepared by the DFS Bureau of Auditing.[5] The guide "provide[s] state agencies guidance regarding the requirements applicable to the disbursement of funds from the State Treasury, regardless of the payment methods[.]"[6] Based upon a now repealed rule of administrative procedure, the guide provides a list of prohibited expenditures, unless such are expressly provided by law, which includes "[r]efreshments such as coffee and doughnuts."[7]

While the administrative rule which automatically prohibited the purchase of refreshments with state funds has been repealed, you state that the council has been informed that the prohibition against purchasing refreshments with state funds remains intact based upon Attorney General Opinion 78-101. In that opinion, this office was asked whether a county property appraiser could expend public funds for the development and distribution of informational material explaining the operations of the appraiser's office. Setting forth the basic requirement that a public officer must have the express or necessarily implied statutory authority to expend public funds for a particular purpose, the opinion found that a property appraiser's statutory duties and powers did not include the development and distribution of informational materials about the appraiser's office. In contrast, the opinion cited several statutes expressly authorizing agencies to prepare materials for informing the public.

In a more recent opinion, this office considered whether a supervisor of elections could use

county funds to purchase a membership in local chambers of commerce and to purchase tickets to luncheons and banquets hosted by community organizations such as a chamber. After discussing the supervisor's express statutory authority to work with the business and local community to develop public-private programs to ensure the recruitment of skilled inspectors and clerks, the opinion concluded that the supervisor of elections was authorized based upon that express statutory authority to expend county funds to purchase memberships in local chambers of commerce and to pay related expenses for attendance to meetings of the chambers.[8]

A review of the powers and duties of the MPOAC enumerated in section 339.175(11)(c), Florida Statutes, does not reveal an express authority to purchase refreshments for the meetings or seminars of the council, nor does the purchase of refreshments appear necessary to carry out the council's express powers.[9] It is my opinion, therefore, that state law does not authorize the expenditure of funds by the MPOAC for refreshments at its meetings, seminars, or conferences.

Sincerely,

Pam Bondi
Attorney General

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[1] This office does not interpret federal law and, therefore, offers no comment on the application of such in this instance. Questions involving the application of federal law or regulations would be more appropriately addressed to the federal agency administering the funds. Moreover, whether 2 CFR s. 200.432, recognizing that refreshments may be provided by a non-Federal entity sponsoring or hosting a conference whose primary purpose is the dissemination of technical information beyond the non-Federal entity, serves as sufficient authority for the purchase of refreshments by the MPOAC at its meetings is a determination which must be made by the Florida Department of Financial Services.

[2] Section 339.175(11)(a), Fla. Stat.

[3] *See Forbes Pioneer Boat Line v. Board of Commissioners of Everglades Drainage District*, 82 So. 346 (Fla. 1919); *Halifax Drainage District of Volusia County v. State*, 185 So. 123, 129 (Fla. 1938); *State ex rel. Davis v. Jumper Creek Drainage District*, 153 Fla. 451, 14 So. 2d 900, 901 (Fla. 1943) (because the districts are creatures of statute, each board of supervisors must look entirely to the statute for its authority); *Roach v. Loxahatchee Groves Water Control District*, 417 So. 2d 814 (Fla. 4th DCA 1982). *And see* Ops. Att'y Gen. Fla. 89-34 (1989), 96-66 (1996), 98-20 (1998), and 04-26 (2004).

[4] *Halifax Drainage District of Volusia County v. State, supra; State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So. 2d 628 (Fla. 1st DCA 1974), *cert. dismissed*, 300 So. 2d 900 (Fla. 1974); *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493 (Fla. 1973). *And see, e.g.,* Ops. Att'y Gen. Fla. 02-30 (2002) and 04-48 (2004).

[5] Reference Guide for State Expenditures, Division of Accounting and Auditing, Bureau of

Auditing, Department of Financial Services (updated 2011).

[6] *Id* at p. 7.

[7] Reference Guide, p. 45, citing Rule 69I-40.103, F.A.C. (repealed 10/14/2013). *See State of Florida, Department of Financial Services v. Peter R. Brown Construction, Inc.*, 108 So. 3d 723 (Fla. 1st DCA 2013) (Rule 69I-40.103, F.A.C., restricting expenditures for decorative items was an invalid exercise of delegated legislative authority).

[8] *See* Op. Att'y Gen. Fla. 02-16 (2002).

[9] It should be noted that s. 339.175(11)(b), Fla. Stat., provides: "Members of the council do not receive any compensation for their services, but may be reimbursed from funds made available to council members for travel and per diem expenses incurred in the performance of their council duties as provided in s. 112.061."