Counties -- Lobbying

Number: AGO 2014-01

Date: February 13, 2014

Subject:
Counties -- Lobbying

Mr. Chip Fletcher
Hillsborough County Attorney
Post Office Box 1110
Tampa, Florida 33601

RE: COUNTIES – COUNTY FUNDS – SPECIAL DISTRICTS – HILLSBOROUGH COUNTY CIVIL SERVICE BOARD – use of funds to hire lobbyist. Ch. 2000-445, Laws of Fla.

Dear Mr. Fletcher:

On behalf of the Hillsborough County Commission, the Hillsborough County Administrator, and the Hillsborough County Clerk of the Circuit Court, you ask the following question:

Does the Hillsborough County Clerk of the Circuit Court have the legal authority to use county funds to pay expenditures incurred by the Hillsborough County Civil Service Board under a contract with a government relations business entity that will represent the interests of the Board in the State of Florida legislative process?

In sum:

While the appropriation of funds by the Hillsborough County Commission for use by the Hillsborough County Civil Service Board to hire a lobbying firm to represent the interest of the Board may be considered by the clerk of courts as a reliable basis for the legality of such an expenditure, it would appear that the civil service board's enabling legislation does not directly or by implication authorize the Board to contract with a lobbying firm to represent its interest before the Florida Legislature.

You state that the Hillsborough County Civil Service Board (board) is considering the engagement of a lobbying firm to represent the interests of the board before the Florida Legislature under a contract with a cap of $75,000.00 for such services. The funds would be appropriated by the Hillsborough County Commission. The Clerk of Court, in her pre-auditing function before approving payment, does not believe that expenditure of the funds for such a purpose is authorized under the board's enabling legislation.

In Attorney General Opinion 2001-29, this office found that a clerk of courts should be able to rely upon a county commission's determination that a county purpose will be served by its appropriation when he or she is evaluating the legality of a payment. In this instance, however, the county commission has also asked for this office's comments on the expenditure of funds for

lobbying by the Board.[1]

Chapter 2000-445, Laws of Florida, establishes the "Civil Service Act of 2000" for Hillsborough County, which applies to all classified personnel employed in specified agencies and authorities within the county, unless otherwise exempted.[2] The Hillsborough County Civil Service Board is created to conduct the business of the district, including the establishment of an annual budget and the expenditure of appropriated funds for the purposes of the act.[3] The act further enumerates powers and duties of the board, specifically authorizing the board to "[e]mploy, discipline, and terminate a director and such other personnel as necessary to carry out the purposes of this act and within the scope of its budget."[4] Moreover, the board has specific authority to "[e]mploy, discipline, and terminate or contract for legal counsel as may be needed and within the scope of its budget"[5] and to contract for performance audits as required by law.[6]

As a statutorily created entity, the district 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.[7] Moreover, any reasonable doubt as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof.[8]

This office previously determined that in light of a county's home rule powers, a board of county commissioners may expend county funds for lobbying provided that it first makes appropriate legislative findings as to the purpose of the expenditure and the benefits which would accrue to the county.[9] Numerous opinions of the Attorney General, however, adhere to the general principle that public funds may not be expended by a district or other statutory entity unless there is a specific statutory provision authorizing such expenditure.[10] More specifically, this office has stated that public funds may not be expended by public entities for lobbying purposes unless expressly and specifically authorized by state law.[11]

The stated purpose of Hillsborough County's civil service act is to "establish a system for the formulation and implementation of procedures to ensure the uniform administration of the classified service" for the county.[12] Considering this limited purpose, along with the distinction between who may be employed by the board and the ability to contract for a legal counsel, there is no direct or apparent authority for the board to contract for lobbying services.

Accordingly, it is my opinion that the Hillsborough County Civil Service Board is not authorized to contract with a government relations business entity that will represent the interests of the Board in the State of Florida legislative process.

Sincerely,

Pam Bondi
Attorney General

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[1] Memorandum to Hillsborough County Board of County Commissioners, December 6, 2013,

reporting board approval of items A-1 through A-59 at December 4, 2013, meeting; Agenda Item A-13, Request an opinion from Florida Attorney General regarding appropriate use of County funds.

[2] Sections 3 and 4, Ch. 2000-445, Laws of Fla.

[3] Section 7, Ch. 2000-445, Laws of Fla..

[4] Section 7(2)(f), Ch. 2000-445, Laws of Fla.

[5] Section 7(2)(g), Ch. 2000-445, Laws of Fla.

[6] Section 7(2)(x), Ch. 2000-445, Laws of Fla.

[7] *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).

[8] *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).

[9] *See* Op. Att'y Gen. Fla. 88-52 (1988).

[10] *See, e.g.,* Ops. Att'y Gen. Fla. 77-08 (1977), 75-120 (1975), 68-12 (1968), 71-28 (1971), 78-12 (1978), 73-148 (1973), 67-20 (1967), and 74-299 (1974). *See also Florida Development Commission v. Dickinson*, 229 So. 2d 6 (Fla. 1st DCA 1969), *cert. denied*, 237 So. 2d 530 (Fla. 1970) (to perform any function for the state or to expend any money belonging to the state, the officer seeking to perform such function or to incur such obligation against the state must find and point to a constitutional or statutory provision authorizing him to do so).

[11] *See* Op. Att'y Gen. Fla. 77-08 (1978) and authorities cited therein, wherein this office stated that this conclusion, that public funds may not be expended by a statutory entity for lobbying purposes unless expressly and specifically authorized by statute, is consistent with the weight of authority throughout the country.

[12] Section 2, Ch. 2000-445, Laws of Fla.