Port authority, employee severance pay

Number: AGO 2013-09

Date: June 07, 2013

Subject:
Port authority, employee severance pay

Mr. Damon Chase, Chairman
Seminole County Port Authority
1510 Kastner Place, Suite 1
Sanford, Florida 32771

RE: PORT AUTHORITIES – PORTS – BONUSES – SEVERANCE PAY – EMPLOYMENT CONTRACTS – whether port authority is a "unit of government" for purposes of s. 215.425, Fla. Stat., for employee severance pay. s. 215.425, Fla Stat.; Ch. 2010-240, Laws of Fla.

Dear Mr. Chase:

On behalf of the Board of Directors of the Seminole County Port Authority, you have asked for my opinion on substantially the following question:

Is the Seminole County Port Authority, a dependent special district, a "unit of government" for purposes of section 215.425, Florida Statutes, which limits the amount of severance pay that can be authorized under an employment contract?

In sum:

The Seminole County Port Authority, a dependent special district, is a "unit of government" for purposes of section 215.425, Florida Statutes, and employment contracts entered into by the authority after July 1, 2011, would be subject to the restrictions on severance pay contained therein.

The Seminole County Port Authority (the authority) is a dependent special district, a "body politic and corporate," created to operate the Port of Sanford.[1] The port authority is empowered to "serve as a local governmental body within the meaning of Section 10(c) of Article VII of the State Constitution or as a local agency under part II of chapter 159, Florida Statutes[.]"[2]

Information supplied with your request indicates that after July 1, 2011, the authority entered into an employment agreement with its administrator which provided for six months severance pay. While this office will not comment on any particular contract to which the authority is a party, I understand your question to be whether a unit of local government such as the port authority may be a "unit of government" within the scope of section 215.425(4)(a), Florida Statutes, which limits the severance payments that can be authorized under an employment contract.

Your question specifically references section 215.425(4)(a), Florida Statutes, which requires

that, after July 1, 2011:

"[A] unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor must include the following provisions in the contract:
1. A requirement that severance pay provided may not exceed an amount greater than 20 weeks of compensation.
2. A prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036(30), by the unit of government."[3]

The phrase "unit of government" as it is used in section 215.425, Florida Statutes, is not defined.[4] However, the Legislature has not included qualifying or limiting language and, in the absence of any such language, the statute should not be read to include limitations that are not contained therein. Where the plain and ordinary meaning of statutory language is clear, that language should not be construed in a manner that would extend, modify, or limit its express terms or its reasonable and obvious implications.[5]

The Seminole County Port Authority is constituted by the Legislature as a body politic and corporate, created to operate the Port of Sanford. The port authority is a dependent district, defined by statute as a "local unit of special purpose, as opposed to general-purpose, government[.]"[6] Section 215.425, Florida Statutes, applies broadly to "units of government" without limitation. Thus, section 215.425, Florida Statutes, would appear to apply to a local unit of government such as the Seminole County Port Authority.[7]

In sum, it is my opinion that the Seminole County Port Authority, a local unit of government, is a "unit of government" as that phrase is used in section 215.425, Florida Statutes, for the purpose of determining severance payments for its employees. I note that your attorney has reached the same conclusion[8] and this office concurs in his determination.

Sincerely,

Pam Bondi
Attorney General

PB/tgh

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[1] Section 1, Ch. 2010-240, Laws of Fla.

[2] Section 3(19), *id.*

[3] Further, any agreement or contract executed on or after July 1, 2011, which involves extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract pursuant to s. 215.425(5), Fla. Stat.

[4] *But see* s. 1.01(8), Fla. Stat., stating that "[t]he words 'public body,' 'body politic,' or 'political subdivision' include counties, cities, towns, villages, special tax school districts, special road and bridge districts, bridge districts, and *all other districts* in this state." (e.s.)

[5] *See Department of Revenue ex rel. Smith v. Selles*, 47 So. 3d 916 (Fla. 1st DCA 2010) (where plain and ordinary meaning of statutory language is unambiguous, court cannot construe statute in manner that would extend, modify, or limit its express terms or its reasonable and obvious implications); *Hott Interiors, Inc. v. Fostock*, 721 So. 2d 1236 (Fla. 4th DCA 1998) (if statute is not ambiguous, unreasonable, or illogical, the court may not go beyond clear wording and plain meaning to expand its reach; to do so would extend or modify the express terms of the statute, which would be an improper abrogation of legislative power). *And compare* s. 215.322(5), Fla. Stat., relating to the acceptance of credit cards by state agencies, *units of local government*, and the judicial branch which states that "[a] unit of local government, including a municipality, special district, or board of county commissioners or other governing body of a county. . . ." may accept payment by credit card for financial obligations owed to that unit of local government.

[6] *See* s. 189.403(1) and (2), Fla. Stat., defining "[s]pecial district" and "[d]ependent special district."

[7] *Cf.* s. 119.011(2), Fla. Stat., including "districts" within the definition of the term "[a]gency" along with other separate units of government created or established by law; s. 189.403(1), Fla. Stat., defining a "[s]pecial district" as "a local unit of special purpose, as opposed to general-purpose, government" and (2) defining a "[d]ependent special district" as a special district that meets certain specified criteria; and Ops. Att'y Gen. Fla. 12-35 (2012) (housing finance authority as local governmental unit) and 07-17 (2007) (water and sewer district, independent special district as a special district and a local unit of special purpose government).

[8] *See* Memorandum of Law from Stephen H. Coover to Attorney General Pam Bondi, dated March 22, 2013.