Employment Contracts -- Bonuses

Number: INFORMAL

Date: September 18, 2014

Mr. J. Michael Haygood
701 Northpoint Parkway
Suite 209
West Palm Beach, Florida 33407

Dear Mr. Haygood:

As General Counsel of the Riviera Beach Community Redevelopment Agency, you have requested this office's assistance in resolving a question related to negotiations of an employment contract with the executive director of the agency. Attorney General Bondi has asked me to respond to your letter.

More specifically, you have asked whether a "lump sum merit retention payment" would violate the provisions of section 215.425, Florida Statutes. According to your letter, the executive director was initially hired in September 2010 under a two-year term agreement. The current contract negotiations represent the second modification of the agreement. The executive director negotiated a fixed base salary during the first two terms of the agreement and is now requesting a "lump sum merit retention payment" payable on the effective date of the second modification of the agreement in addition to a base salary. You have requested our assistance in determining whether this "lump sum merit retention payment" is prohibited by section 215.425, Florida Statutes, which prohibits extra compensation claims.

Initially, I must advise you that this office does not interpret the terms of contracts, so an analysis of the nature of a "lump sum merit retention payment" as that term is used in the executive director's contract may not be undertaken by this office.[1] In addition, you have provided no explanatory information about this lump sum payment and my comments are therefore limited to a general discussion of section 215.425, Florida Statutes, and its application.

Section 215.425, Florida Statutes, generally prohibits the payment of extra compensation to any officer, agent, employee, or contractor after the service has been rendered or the contract has been made.[2] This office has determined that "extra compensation" generally refers to an additional payment for services performed or compensation over that fixed by contract or by law when a service was rendered.[3] As this office previously found, the payment of bonuses to existing employees for services they have already performed would violate section 215.425, Florida Statutes, absent a preexisting employment contract making such bonuses a part of their salary or the existence of a bonus program rewarding outstanding employees.[4] Subsection (3) of the statute, however, provides:

"(3) Any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:
(a) Base the award of a bonus on work performance;
(b) Describe the performance standards and evaluation process by which a bonus will be

awarded;
(c) Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based; and
(d) Consider all employees for the bonus."

This office has previously determined that the provisions of section 215.425, Florida Statutes, apply broadly to "units of government" without limitation.[5] As a creation of the Florida Legislature and, I assume, the City of Riviera Beach, the Riviera Beach Community Redevelopment Agency would appear to be a unit of government subject to section 215.425, Florida Statutes.

However, as the text emphasized above suggests, this office has stated in several previously issued Attorney General Opinions that extra compensation that is paid as part of a preexisting employment contract is not prohibited by section 215.425, Florida Statutes. It appears from your letter that the "lump sum merit retention payment" for the executive director is the subject of contract negotiations and, if that is the case, I believe that these informal comments may provide you with some direction in this matter.

I trust that these informal comments and the copies of previously issued Attorney General Opinions that I am enclosing will be helpful to you in advising your client, the Riviera Beach Community Redevelopment Agency.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

Enclosures: Op. Att'y Gen. Fla. 00-48 (2000)
Inf. Op. To Gilmore, dated May 7, 2014

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[1] *See* s. 16.01(3), Fla. Stat., and Department of Legal Affairs Statement Concerning Attorney General Opinions (available at www.myfloridalegal.com).

[2] Section 215.425(1), Fla. Stat. Subsection (2) of the statute provides an exception for bonus or severance payments paid wholly from nontax revenues and nonstate appropriated funds paid to an officer, agent, employee, or contractor of a public hospital that is operated by a county or a special district, and for the payment of a clothing allowance given to plainclothes deputies pursuant to s. 30.49, Fla. Stat.

[3] *See, e.g.*, Ops. Att'y Gen. Fla. 89-53 (1989) and 75-279 (1975), stating that the term "denotes something done or furnished in addition to, or in excess of the requirement of the contract; something not required in the performance of the contract."

[4] *See* Op. Att'y Gen. Fla. 00-48 (2000).

[5] *See* Op. Att'y Gen. Fla. 13-09 (2013) (dependent district port authority subject to s. 215.425, Fla. Stat., as a unit of government).