Housing Authority -- Bonus

Number: INFORMAL

Date: May 08, 2014

Mr. Ricardo L. Gilmore
General Counsel
Tampa Housing Authority
201 East Kennedy Boulevard
Suite 600
Tampa, Florida 33602

Dear Mr. Gilmore:

This is in response to your request for assistance in determining whether section 215.425, Florida Statutes, applies to the Tampa Housing Authority, in light of the authority's funding sources not including state or local funds. If the statute is applicable, you question whether an employment contract with the authority's president and chief executive officer would allow the payment of a bonus.

You state the Tampa Housing Authority (authority), organized under Chapter 421, Florida Statutes, and with revenues of nearly $400 million, receives no local or state funding. Rather, the authority's funding is derived from federal grants and from other projects and sources. You indicate that the city's involvement is limited to appointing the Board of Commissioners which governs the authority. The board of commissioners reviews the president's performance annually and in 2013 granted a one-time bonus of $6,500.00. When questions arose as to the propriety of such action, the bonus was suspended until advice could be obtained from this office.

You indicate that the employees of the authority are managed by the president and that the president is the only employee over whom the commission has direct authority. You also state that the president works under a contract which provides a procedure for the commission to review the president's performance and to award a "merit increase." Historically, the board has given the president "modest annual raises," but had decided to give a bonus in 2013.

Initially, I would state that this office does not interpret the terms of contracts, so a decision as to whether a bonus is the equivalent of a "merit increase" as that term is used in the president's employment contract is a factual question which may not be determined by this office. The following discussion, however, will address the application of section 215.425, Florida Statutes, as it would apply to the payment of a bonus.

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.[1] 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.[2] 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.[3] 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.[4] As a creation of the City of Tampa pursuant to section 421.04, Florida Statutes, the Tampa Housing Authority would appear to be a unit of government subject to section 215.425, Florida Statutes.

Thus, any bonus program instituted by the authority would have to comply with the provisions in section 215.425(3), Florida Statutes. You state that the president is the sole employee of the board, while the remaining employees of the authority are under the control and management of the president, and that the contract between the authority and the president setting forth the "merit increase" after review by the board complies with the requirements of the statute. While, as noted above, this office cannot interpret the terms of the contract to determine whether the bonus provided to the president is a "merit increase" in the president's salary, there is some question as to whether the contractual provision would qualify as a bonus program for the housing authority, absent a strict adherence to the requirements of section 215.425(3), Florida Statutes.

Section 421.05(2), Florida Statutes, prescribes the powers possessed by housing authorities created pursuant to the chapter:

"The powers of each authority shall be vested in the commissioners thereof in office from time to time. A majority of the commissioners shall constitute a quorum of the authority for the purpose of conducting its business and exercising its powers and for all other purposes. Action may be taken by the authority upon a vote of a majority of the commissioners present, unless in any case the bylaws of the authority require a larger number. The mayor with the concurrence of the governing body shall designate which of the commissioners appointed shall be the first chair, but when the office of the chair of the authority thereafter becomes vacant, the authority shall select a chair from among its commissioners. An authority shall select from among its commissioners a vice chair; and it *may employ a secretary, who shall be the executive director, technical experts, and such other officers, agents, and employees, permanent and temporary, as it may require and shall determine their qualifications, duties, and compensation.* For such legal services as it may require, an authority may call upon the chief law officer of the city or may employ its own counsel and legal staff. An authority may delegate to one or more of its agents or employees such powers or duties as it may deem proper." (e.s.)

The plain language of the statute states that a housing authority has the discretion to employ employees it may require and to delegate to such employees such powers and duties it may deem proper, but it is the housing authority which must determine the qualifications, duties, and compensation of such employees. While, as you have stated, the president controls and manages the employees of the authority, it would appear that the commissioners of the housing authority would be responsible for implementing a bonus program which would be applicable to all of the housing authority employees.

I trust that these informal comments will be helpful in your advising the commissioners of the Tampa Housing Authority.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] 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.

[2] *See, e.g.,* Ops. Att'y Gen. Fla. 89-53 (1989), 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."

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

[4] *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).