Aviation Authority, employee incentive programs

Number: INFORMAL

Date: January 30, 2012

Ms. Gigi Skipper Rechel
General Counsel
Tampa International Airport
Post Office Box 22287
Tampa, Florida 33622

Dear Ms. Rechel:

On behalf of the Hillsborough County Aviation Authority, you have asked for this office's opinion as to whether the authority's existing employee incentive program is valid under section 215.425(3), Florida Statutes.

This office must presume the validity of actions taken by a governmental entity unless and until a court of competent jurisdiction declares otherwise. In an effort to be of assistance, however, the following general comments are offered.

As recently amended by Chapter 2011-143, Laws of Florida, section 215.425(3), Florida Statutes, states:

"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."

The statute thus sets forth specific criteria that must be included in a policy seeking to implement a bonus plan. As stated in the staff analysis for the bill enacted as Chapter 2011-143, Laws of Florida, "[t]he bill creates requirements for any policy, ordinance, rule, or resolution designed to implement a bonus scheme."[1]

While the statute, for example, requires that any such policy designed to implement a bonus plan must base the award on work performance, the statute does not define the term "work performance." In the absence of a statutory definition, the term would generally be given its plain and ordinary definition.[2] In addition, the plan, which must be available to all employees, must describe the performance standards and evaluation process by which a bonus will be awarded and notify all employees of the policy *before* the beginning of the evaluation period on which a bonus will be based.

As noted above, this office must presume the validity of any *enacted* plan until and unless

determined otherwise by a court of competent jurisdiction. In addition, your inquiry requests this office to determine the validity of your entire bonus plan in light of the provisions of section 215.425(3), Florida Statutes. It is beyond the resources of this office to review the terms of each and every proposed bonus program in order to determine whether such a plan complies with the provisions of section 215.425, Florida Statutes. However, this office may be able to provide assistance on a specific legal question regarding the interpretation of a provision of the statute as applied to a particular element of a *proposed* plan.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] The Florida Senate Bill Analysis and Fiscal Impact Statement on CS/CS/CS/SB 88 (2011 regular session), prepared by the Professional Staff of the Governmental Oversight and Accountability Committee, dated April 14, 2011.

[2] *See generally Sieniarecki v. State*, 756 So. 2d 68 (Fla. 2000) (in absence of a statutory definition, words of common usage are construed in their plain and ordinary sense and, if necessary, the plain and ordinary meaning of the word can be ascertained by reference to a dictionary); *In re McCollam*, 612 So. 2d 572 (Fla. 1993) (when language of statute is clear and unambiguous and conveys a clear meaning, statute must be given its plain and ordinary meaning).