Fla. Transportation Comm., rail commission

Number: INFORMAL

Date: November 04, 2010

Ms. Martha Lanahan
Chair, Florida Transportation Commission
605 Suwannee Street
Tallahassee, Florida 32399-0450

Dear Ms. Lanahan:

You have asked for assistance in determining whether the Florida Transportation Commission (FTC) has oversight of the Florida Statewide Passenger Rail Commission (rail commission).

In light of the fact that this office has not been advised that the Florida Statewide Passenger Rail Commission joins in your request, the following discussion, while tangentially commenting upon the rail commission, is not meant to constitute an opinion of the Attorney General regarding the powers and duties of that commission. The following informal comments, however, are offered in order to be of some assistance.

Section 20.23(2), Florida Statutes, creates the Florida Transportation Commission, assigned to the Office of the Secretary of the Department of Transportation for administrative and fiscal accountability purposes, but otherwise functioning independently of the control and direction of the department.[1] The FTC's primary functions, among others, are to:

"1. Recommend major transportation policies for the Governor's approval, and assure that approved policies and any revisions thereto are properly executed.

2. *Periodically review the status of the state transportation system including* highway, transit, *rail*, seaport, intermodal development, and aviation components of the system and recommend improvements therein to the Governor and the Legislature.

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5. Monitor on at least a quarterly basis, the efficiency, productivity, and management of the department, using performance and production standards developed by the commission pursuant to s. 334.045.

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8. *Monitor the efficiency, productivity, and management of* the authorities created under chapters 348 and 349, including any authority formed using the provisions of part I of chapter 348 and *any authority formed under chapter 343 which is not monitored under subsection (3)*. The commission shall also conduct periodic reviews of each authority's operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with

applicable laws and generally accepted accounting principles."[2] (e.s.)

Section 20.23(2)(c), specifically states that the FTC "may not enter into the day-to-day operation of the department or a monitored authority[.]" Moreover, the FTC does not have oversight of those authorities created in Chapter 343, Florida Statutes, which are monitored by the rail commission pursuant to section 20.23(3), Florida Statutes. Thus, while it would appear that the FTC has been granted the authority to review the status of the state transportation system, including rail operations, and recommend improvements to the Governor and the Legislature, the statute specifically states that it is not responsible for monitoring authorities created in Chapter 343, Florida Statutes, which are monitored by the rail commission under section 20.23(3), Florida Statutes.

The Florida Statewide Passenger Rail Commission was created in 2009 by Chapter 2009-271, Laws of Florida, with the primary functions of:

"1. Monitoring the efficiency, productivity, and management of all publicly funded passenger rail systems in the state, including, but not limited to, any authority created under chapter 343, chapter 349, or chapter 163 if the authority receives public funds for the provision of passenger rail service. The commission shall advise each monitored authority of its findings and recommendations. The commission shall also conduct periodic reviews of each monitored authority's passenger rail and associated transit operations and budget, acquisition of property, management of revenue and bond proceeds, and compliance with applicable laws and generally accepted accounting principles. The commission may seek the assistance of the Auditor General in conducting such reviews and shall report the findings of such reviews to the Legislature. *This paragraph does not preclude the Florida Transportation Commission from conducting its performance and work program monitoring responsibilities.*
2. Advising the department on policies and strategies used in planning, designing, building, operating, financing, and maintaining a coordinated statewide system of passenger rail services.
3. Evaluating passenger rail policies and providing advice and recommendations to the Legislature on passenger rail operations in the state."[3] (e.s.)

The rail commission is assigned to the Office of the Secretary of the Department of Transportation for administrative and fiscal accountability purposes, but otherwise functions independently of the control and direction of the department, with the exception that the reasonable expenses of the commission are subject to approval by the secretary.[4]

There is an apparent discrepancy between the language in section 20.23(2), Florida Statutes, and the 2009 legislation in that the authority of the FTC to continue to monitor the programs of the department would seem contrary to the exclusion of those entities monitored by the rail commission. The legislative history of the bill creating the rail commission, however, states that the "bill eliminates the Florida Transportation Commission's oversight of any regional transportation authority operating under the oversight of the newly created Florida Statewide Passenger Rail Commission."[5] Moreover, as the more specific and later in time, the provisions in the 2009 legislation, creating section 20.23(3), Florida Statutes, would appear to control over the earlier and more general provisions in section 20.23(2), Florida Statutes, governing the authority of the Florida Transportation Commission.[6]

I trust that these informal comments will be of assistance to you.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] Section 20.23(2)(a)4, Fla. Stat.

[2] Section 20.23(2)(b), Fla. Stat.

[3] Section 20.23(3)(a), Fla. Stat.

[4] *See*s. 20.23(3)(d), Fla. Stat.

[5] *See* The Florida Senate Bill Analysis and Fiscal Impact Statement, HB 1B, December 8, 2009.

[6] *See McKendry v. State*, 641 So. 2d 45 (Fla. 1994) (specific statute covering a particular subject area will control over a statute covering the same and other subjects in more general terms); *Rowe v. Pinellas Sports Authority*, 461 So. 2d 72 (Fla. 1984) (when a special act and a general law conflict, the special act will prevail); *Florida Association of Counties, Inc. v. Department of Administration, Division of Retirement*, 580 So. 2d 641 (Fla. 1st DCA 1991), *approved*, 595 So. 2d 42 (Fla. 1992) (general rule is that in cases of conflicting statutory provisions, latter expression will prevail over former).