E911 system funds

Number: INFORMAL

Date: February 11, 2009

Mr. John C. Ford, Chairman
Florida E911 Board
4030 Esplanade Way, Suite 160
Tallahassee, Florida 32399-0950

Dear Mr. Ford:

You have asked for assistance in clarifying several issues involving the Florida Legislature, the E911 Board, and certain provisions of state and federal legislation. Attorney General McCollum has asked me to respond to your letter.

After reviewing the information you have submitted, it does not appear that this office is authorized to provide a formal legal opinion on these matters. Questions relating to the appropriations power of the Florida Legislature may only be addressed by this office at the request of the Legislature itself.[1] In addition, Florida Attorney General Opinions may address questions of state law, but we have no authority to provide legal opinions on issues of federal law. The agency involved in construing and applying the "ENHANCE 911 Act of 2004" is the National Highway Traffic Safety Administration. The provisions of the "NET 911 Improvement Act of 2008" are administered by the Federal Communications Commission. You may wish to direct your request for clarification to those agencies on questions under each act respectively.

However, in an effort to provide you with some assistance relating to E911 funds, I note the following. Florida's "Emergency Communications Number E911 Act," section 365.172(2), Florida Statutes, provides:

"It is the intent of the Legislature to:
(a) Establish and implement a comprehensive statewide emergency telecommunications number system that will provide users of voice communications services within the state rapid direct access to public safety agencies by accessing the telephone number "911."
(b) Provide funds to counties to pay certain costs associated with their E911 or 911 systems, to contract for E911 services, and to reimburse wireless telephone service providers for costs incurred to provide 911 or E911 services.
(c) Levy a reasonable fee on users of voice communications services, unless otherwise provided in this section, to accomplish these purposes.
(d) Provide for an E911 board to administer the fee, with oversight by the office, in a manner that is competitively and technologically neutral as to all voice communications services providers.
(e) Ensure that the fee established is used exclusively for recovery by wireless providers and by counties for costs associated with developing and maintaining E911 systems and networks in a manner that is competitively and technologically neutral as to all voice communications services providers.
It is further the intent of the Legislature that the fee authorized or imposed by this section not

necessarily provide the total funding required for establishing or providing E911 service."

To accomplish these purposes, the Legislature established the E911 Board and granted it the authority to administer the E911 fee.[2] The Technology Program within the Department of Management Services is charged with overseeing the administration of the fee by the Board.[3]

Section 365.172(6), Florida Statutes, provides the powers and authority of the E911 Board. Among those powers is the direction that the board administer the E911 fee and implement, maintain, and oversee the funds.[4] The board is also charged with reviewing and overseeing disbursement of revenues deposited in the fund.[5]

Statutory provisions relating directly to the E911 fee are contained in section 365.172(8), Florida Statutes, which specifically provides that: "[i]t is the intent of the Legislature that all revenue from the fee be used as specified in s. 365.173(2)(a)-(i)." Authorized expenditures and limitations on expenditures of the E911 fee are set forth in subsection (9) of the statute.

The Emergency Communications Number E911 System Fund is established in section 365.173, Florida Statutes, which requires that all revenues derived from the fee imposed by section 365.172, Florida Statutes, must be paid into the State Treasury and must be segregated into the Emergency Communications Number E911 System Fund.[6] As the statute provides:

"All moneys must be invested by the Chief Financial Officer pursuant to s. 17.61. All moneys in such fund are to be expended by the office for the purposes provided in this section and s. 365.172. These funds are not subject to s. 215.20."[7]

Moneys in the fund must be distributed and used as provided in subsection (2). Thus, sections 365.172 and 365.173, Florida Statutes, make specific provision for the expenditure of fees levied and collected pursuant to those statutes.

You have also asked about interest earned on trust funds and the expenditure of that interest. This office has concluded on numerous occasions that, in the absence of a statute directing how the interest is to be used, interest earned on invested funds generally follows the principal. For example, this office stated in Attorney General Opinion 77-26 that interest earned on the investment of the proceeds of a revenue bond issue deposited in a construction trust fund established by resolution of a district school board could not be lawfully used by the school board to meet a deficit in its operating budget. Rather, the proceeds of the revenue bond issue and any interest earned on those proceeds could only be used for the projects and purposes defined and designated in the enabling statute and enabling resolution. Any diversion of moneys deposited in such a trust fund, or the accrued interest, to any purpose other than those prescribed in the enabling legislation and bond enabling resolution, or in the bonds or certificates issued and sold thereunder, was invalid.

Similarly, in Attorney General Opinion 92-13, this office concluded that interest accumulating on taxes deposited in a bank prior to distribution follows the taxes. Again, in Attorney General Opinion 94-39, this office stated that interest accumulated on invested impact fees may be used to replace fees not collected due to waivers or deferrals for low income housing, as long as such interest was used for the purpose for which the specific fund was created.[8]

Thus, in the absence of any statutory direction relating to the expenditure of interest on trust funds, those funds must be expended for the projects and purposes defined and designated in the enabling statutes for the trust itself.

I trust that these informal comments will be helpful to you and that you understand that the authority of this office is limited by statute. This informal advisory opinion is provided to you by the Department of Legal Affairs in an effort to be of assistance. The conclusions herein are those of the author and do not constitute a formal opinion of the Attorney General.

Sincerely,

Gerry Hammond
Senior Assistant Attorney General

GH/tsh

Enclosures

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[1] *See* s. 16.01(3), Florida Statutes, and Department of Legal Affairs Statement Concerning Attorney General Opinions (copies enclosed).

[2] *See* s. 365.172(5), Fla. Stat.

[3] Section 365.172(4), Fla. Stat.

[4] Section 365.172(6)(a)1. and 2., Fla. Stat.

[5] Section 365.172(6)(a)3., Fla. Stat.

[6] Section 365.173(1), Fla. Stat.

[7] Section 215.20, Florida Statutes, is entitled "[c]ertain income and certain trust funds to contribute to the General Revenue Fund."

[8] *And see* Ops. Att'y Gen. Fla. 88-01 (1988) (interest earned on funds generated by a tax levy pursuant to s. 236.25(2), Fla. Stat., must be applied to the purposes for which the tax was levied) and 02-32 (2002); 85 C.J.S. *Taxation* s. 1064 (except insofar as the Legislature changes the rule, interest, penalties, and cost collected on delinquent taxes follow the tax and the apportionment thereof).