Housing Authority, contract with executive director

Number: INFORMAL

Date: March 21, 2008

Ms. Lillian Sampson
Chair, Daytona Beach Housing Authority
Post Office Box 1311
Daytona Beach, Florida 32115

Dear Ms. Sampson:

On behalf of the Daytona Beach Housing Authority, you ask about the validity of the housing authority contract with its executive director.

The Daytona Beach Housing Authority (DBHA) is a dependent special district created pursuant to Chapter 421, Florida Statutes, to provide public housing to low income persons within the Daytona Beach Area.[1] According to your letter, DBHA is funded primarily by operating subsidies and grants received from the U.S. Department of Housing and Urban Development (HUD).

You state that as part of HUD's financial review of the DBHA, HUD stated that the employment contract of DBHA's executive director contained questionable benefits that appeared to be excessive, including "the severance packages, compensation terms, additional leave, etc." HUD has requested that DBHA submit the contact to this office for review. You, therefore, ask whether the employment contract between a housing authority and its executive director is subject to review and approval by the Florida Attorney General's Office. You also ask whether the current contract between DBHA and its executive director is valid under Florida law.

I am not aware of any provision under state law requiring employment contracts between a housing authority and its executive director be submitted to this office for approval. As noted in the material you submitted to this office, section 421.08(1), Florida Statutes, provides that a housing authority has the power " to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority[.]" In addition, section 421.05(2), Florida Statutes, provides in part that a housing authority

"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."

The Attorney General is statutorily authorized to render opinions on questions involving the interpretation of state law. This office does not interpret contractual agreements nor is it authorized to comment upon the validity of an existing contract. Rather, it must presume the validity of such agreement until determined otherwise by a court of competent jurisdiction. In an effort to be of some assistance, however, I would generally note the following.

A special district may exercise only those powers expressly granted by statute or necessarily implied therefrom.[2] As noted above, however, section 421.05(2), Florida Statutes, provides in part that a housing authority "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." The term compensation is generally considered to be broader than the term salary and includes "payment in money or other benefit which will compensate in the strict sense, that is, make even, or be measurably the equivalent of that for which it is given."[3]

In addition, section 421.08(9), Florida Statutes, authorizes the governing board of an authority to approve and implement policies for per diem, travel, and other expenses of its officials, officers, board members, employees, and authorized persons in a manner consistent with federal guidelines.

In light of the above grants of authority to municipal housing authorities, it appears that such authorities may establish the compensation, including benefits, of its officers and employees. In considering severance packages, this office in the past has been concerned with the provisions of section 215.425, Florida Statutes, which prohibits extra compensation being made to any officer, agent, employee, or contractor after the service has been rendered or the contract made. The purpose of such a provision is to prevent payments in the nature of gratuities for past services, and the restriction pertains to extra compensation given after service has been performed, not to compensation earned during service.[4] If, however, such payments are provided for in the contract, such payments would appear to be a part of the compensation package authorized by contact.

This office has recognized that it has generally been accepted that a governmental entity is precluded from entering into contracts that extend beyond the current body's term of office if the subject matter of the contract is governmental.[5] As this office noted in Attorney General Opinion 99-51, this restriction is no longer applicable to municipalities in Florida since the adoption of the Municipal Home Rule Powers Act.[6] As noted above, however, a special district does not possess home rule powers. While the statutes grant a housing authority the authority to determine the compensation of its officers and employees, I cannot state that such a grant would encompass the authority to enter contracts, the subject of which is governmental, to extend beyond the current board's term.[7] As you note, however, the Florida Supreme Court in *Daly v. Stokell*,[8] prior to the adoption of municipal home rule, stated:

"We find no merit to the contention that the contract is invalid and unenforceable because it runs beyond the length of term of the City Commissioners. It is shown that their terms are staggered and expire at different times. When this is the case, the City Commission is a continuing body and may contract for any reasonable time since there is no point at which the terms of all commissioners come to an end. There is no suggestion that five years is an unreasonable time for the contract to run."

Moreover, this office must presume the validity of the contracts that have been entered into and any question regarding the validity of such contracts must be addressed by a court of law, not this office.

I trust that the above informal comments may be of some assistance to the Daytona Beach Housing Authority in resolving these issues.

Sincerely,

Joslyn Wilson
Assistant Attorney General

JW/t

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[1] *See* s. 421.04(1), Fla. Stat., stating in part that "[i]n each city, as herein defined, there is hereby created a public body corporate and politic to be known as the 'Housing Authority' of the city; provided, however, that such authority shall not transact any business or exercise its powers hereunder until or unless the governing body of the city by proper resolution shall declare that there is need for an authority to function in such city."

[2] *See, e.g.*, Ops. Att'y Gen. Fla. 06-24 (2006), 99-73 (1999), and 99-51 (1999) (as statutorily created entities, special districts have only such powers and authority as have been expressly granted by law or may be necessarily implied therefrom in order to carry out an expressly granted power).

[3] *See* Black's Law Dictionary *Compensation* p. 301 (8th rev. ed. 2004) (remuneration and other benefits received in return for services rendered).

[4] *See, e.g.,* Op. Att'y Gen. Fla. 91-51 (1991) (in absence of a statute, collective bargaining agreement, or personnel policy or regulation authorizing such payments, severance payments in lieu of notice constituted extra compensation prohibited by s. 215.425, Fla. Stat.).

[5] *See, e.g.,* Op. Att'y Gen. Fla. 01-52 (2001). *And see Daly v. Stokell,* 63 So. 2d 644 (Fla. 1953); *City of Riviera Beach v. Witt*, 286 So. 2d 574 (Fla. 4th DCA 1973), *cert. denied*, 295 So. 2d 305 (Fla. 1974).

[6] *See Town of Indian River Shores v. Coll*, 378 So. 2d 53 (Fla. 4th DCA 1979); *Tweed v. City of Cape Canaveral*, 373 So. 2d 408 (Fla. 4th DCA 1979), *cert. denied* 385 So. 2d 755 (Fla. 1980) (s. 166.021[4], Fla. Stat., authorizes a city council to enter into contracts, governmental or proprietary in substance, which extend beyond the term of office of the council); Ops. Att'y Gen. Fla. 90-54 (1990) (distinction between proprietary and governmental functions is no longer followed in Florida, given s. 166.021(4), Fla. Stat., securing broad municipal home rule powers to cities) and 84-100 (1984). *And see* Op. Att'y Gen. Fla 01-52 (2001), stating that in light of its home rule powers, a school board may enter into a contract with a term in excess of the board members' terms of office, absent any constitutional or statutory prohibition against such action.

[7] *See, e.g.,* Ops. Att'y Gen. Fla. 99-51 (1999) (hospital district, created as an independent special taxing district, not authorized to enter into an employment contract for a president and chief executive officer for the medical center when that contract will extend beyond the terms of

office of the members of the current board); 77-67 (1977) (employment of secretary and executive director of a municipal housing authority created and operating under Ch. 421, F. S., would appear to be an exercise of the governmental function and thus a contract employing such secretary-executive director would probably not be considered binding upon a successor governing board of a housing authority). *Compare* Op. Att'y Gen. Fla. 99-66 (1999), stating that contracts relating to the day-to-day operations of a special district, such as real estate contracts, managed care contracts, and vendor contracts were proprietary contracts that may extend beyond the terms of office of current board members.

[8] 63 So. 2d 644, 645 (Fla. 1953).