Water authority, use of district funds

Number: INFORMAL

Date: December 13, 2006

The Honorable Carey Baker
Senator, District 20
301 West Ward Avenue
Eustis, Florida 32726-4024

Dear Senator Baker:

This is in response to your request for assistance in determining whether the Lake County Water Authority (authority) may expend funds to underwrite fishing tournaments in the county. You state that the authority has spent $110,000.00 since March, 2005, for fishing tournaments and is currently considering spending an additional $45,000.00. Your understanding is that the authority gives the funds to the Leesburg Chamber of Commerce and that the tournaments are held by ESPN and Bassmasters.

The Lake County Water Authority is a special district the purpose of which is set forth in Section 1, Chapter 2005-314, Laws of Florida, as follows:

"Purpose. – For the purposes of controlling and conserving the freshwater resources of Lake County; *fostering and improving the tourist business in the county by improvements to streams, lakes, and canals in the county; providing recreational facilities for tourists and citizens and taxpayers of the county by a more efficient use of the streams, lakes, and canals in the county; improving the fish and aquatic wildlife of the county by improving the streams, lakes, and canals in the county*; and protecting the freshwater resources of Lake County through assisting local governments in treating of stormwater runoff by conserving fresh water to improve the streams, lakes, and canals in the county, there is created and incorporated a special taxing district extending territorially throughout the present limits of Lake County, Florida. . . ." (e.s.)

A governing board of trustees consisting of seven residents of Lake County has been given all the powers of a body corporate, including the power to: sue and be sued; contract; to buy, sell, own, use, control, operate, improve, and lease all land and personal property as deemed necessary for carrying out the provisions of the authority's enabling act; and to pay all other costs and expenses reasonably necessary or expedient in carrying out and accomplishing the authority's purpose.

As a statutorily created entity, the trustees may only exercise such powers as have been expressly granted by the authority's enabling legislation or powers that must necessarily be exercised in order to carry out an express power. Any reasonable doubt as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof.[1] The implied powers accorded administrative agencies must be indispensable to powers expressly granted, that is, those powers that are necessarily or fairly or reasonably implied as an incident to those powers.[2]

While the authority has the power to foster and improve tourist business in Lake County, the Legislature has directed that this be accomplished through improvements to streams, lakes, and canals in the county. In addition, the authority's ability to provide recreational facilities for tourists and citizens and taxpayers of the county is prescribed through a more efficient use of the streams, lakes, and canals in the county.

Absent a request from the authority, this office is unable to make a definitive statement of whether the payment of funds to the Leesburg Chamber of Commerce for a fishing tournament accomplishes the purpose of the authority. The governing board of trustees of the authority is responsible for making the legislative finding that the expenditure of such funds complies with the authority's express grant of powers. As noted above, however, any reasonable doubt as to the existence of such power must be resolved against the exercise thereof.

Sincerely,

Lagran Saunders
Assistant Attorney General

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[1] *See Halifax Drainage District of Volusia County v. State*, 185 So. 123, 129 (Fla. 1938); *State ex rel. Greenberg v. Florida State Board of Dentistry*, 297 So. 2d 628 (Fla. 1st DCA 1974), *cert. dismissed*, 300 So. 2d 900 (Fla. 1974); *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So. 2d 493 (Fla. 1973). *And see e.g.*, Ops. Att'y Gen. Fla. 02-30 (2002) and 04-48 (2004).

[2] *See, e.g., Gardinier, Inc. v. Florida Department of Pollution Control*, 300 So. 2d 75, 76 (Fla. 1st DCA 1974); *Williams v. Florida Real Estate Commission*, 232 So. 2d 239, 240 (Fla. 4th DCA 1970). *Cf.*, Op. Att'y Gen. Fla. 83-44 (1983), concluding that the Florida Inland Navigation District does not have statutory authority to expend district monies to fund a special marine patrol troop, to provide funds on a matching basis and as outright grants for public information and educational programs.