

Regional Transportation Authority, status of

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Mr. David E. Cardwell
General Counsel Central Florida
Regional Transportation Authority
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Tallahassee, Florida 32302-0810

Dear Mr. Cardwell:

You ask on behalf of the Central Florida Regional Transportation Authority (authority) whether the authority is a special district or an agency of the state. Depending upon the response, you question whether amendments to the statute affecting the authority must be made by general law or special act and whether the authority must be assigned to an existing department within the executive branch of state government.

You state that the Department of Community Affairs has notified the authority of its designation as a special district. Given this office's previous conclusion that a similar transportation authority is a state agency for purposes of the fiscal year that must be used, however, there is confusion as to whether the authority should be characterized as a special district or a state agency.

The Central Florida Regional Transportation Authority was created pursuant to Part II, Chapter 343, Florida Statutes, as "a body politic and corporate, [and] an agency of the state . . . "[1] In a previous informal opinion relative to the status of a similar commuter rail authority, this office concluded that the language in the statute recognizing the authority as an "agency of the state" would make it a state agency for purposes of the fiscal year that must be used.[2] In reaching this conclusion, the opinion considered the Legislature's designation of the authority generally as an agency of the state, the authority's specific exemption from insurance procurement procedures that are otherwise applicable to state agencies, and the applicability of the State Bond Act to the authority's financing activities. The opinion recognized, however, that the authority could be considered a special district for other purposes, such as the reporting requirements contained in Chapter 189, Florida Statutes.

Similarly, the enabling legislation for the Central Florida Regional Transportation Authority allows the authority directly to purchase liability insurance, notwithstanding the procurement procedures that are otherwise applicable to state agencies, and makes the State Bond Act applicable to the authority's financing activities. Thus, while the authority may be considered a state agency for one or more purposes, it possesses characteristics of a special district that would preclude its being characterized as a state agency or a special district exclusively.

The Legislature has created several entities that apparently defy strict classification as either a special district or state agency under all circumstances.[3] For instance, water management districts are clearly special districts. Their enabling legislation does not contain analogous

language creating such districts as "agencies of the state." In Attorney General Opinion 90-66, this office concluded that water management districts, created pursuant to Chapter 373, Florida Statutes, were not state agencies within the purview of section 253.025(8)(e), Florida Statutes [now section 253.025(7)(e), Florida Statutes], governing the acquisition of state land. This conclusion was based on earlier opinions recognizing the distinctions between a state office or agency and a district.[4] For purposes of section 768.28, Florida Statutes, however, water management districts fall within the definition of "state agencies or subdivisions." [5]

Another legislatively created entity possessing characteristics of both a special district and a state agency is the Spaceport Florida Authority, created in section 331.302, Florida Statutes, as a public corporation, body politic, and subdivision of the state to enhance and provide commercial space-related business in the state. Specific language in the statute, however, excludes the Spaceport Authority from being an "agency" as defined in section 216.011, Florida Statutes, prescribing procedures for planning and budgeting for executive branch agencies, and as defined in section 287.012, Florida Statutes, governing procurement by agencies in the executive branch.[6] Based upon the spaceport authority's limited purpose and its limited territorial boundaries, this office concluded in Attorney General Opinion 94-85, that it is a special district.

A "special district" is defined as:

"a local unit of special-purpose, as opposed to general-purpose, government within a limited boundary, created by general law, special act, local ordinance, or by rule of the Governor and Cabinet. The special purpose or purposes of special districts are implemented by specialized functions and related prescribed powers. The term does not include a school district, a community college district, a special improvement district created pursuant to s. 285.17, a municipal service taxing or benefit unit as specified in s. 125.01, or a board which provides electrical service and which is a political subdivision of a municipality or is part of a municipality." [7]

For all practical purposes, it would appear that the Central Florida Regional Transportation Authority is a special district. Those portions of its enabling legislation exempting it from certain requirements or procedures applicable to state agencies and its being referenced as an agency of the state, however, lead to the conclusion that the Legislature may have contemplated its being classified as a state agency for certain purposes. Given the inability to definitively determine whether the authority is a special district or a state agency, it may be advisable to seek legislative clarification on this matter.

The status of the authority as a special district or a state agency would not appear to affect the manner in which amendments to Part II, Chapter 343, Florida Statutes, are made. The authority was created by general law and, therefore, amendments to the enabling legislation to clarify the designation of the authority as a special district or a state agency should most appropriately be made by general law.[8]

I trust these informal comments will assist you in resolving this matter.

Sincerely,

ALS/tgk

[1] Section 343.63(1), Fla. Stat. (1995).

[2] Informal Opinion to Mr. Gilbert M. Robert, September 28, 1994, interpreting whether the Tri-County Commuter Rail Authority is a state agency for purposes of designating a fiscal year.

[3] See s. 616.251, Fla. Stat., creating the "Florida State Fair Authority" as a public body corporate and politic to be considered an instrumentality of the state, subject to the jurisdiction of the state. See *also* Op. Att'y Gen. Fla. 83-20 (1983), in which this office addressed whether the State Fair Authority is a "state agency" or an "instrumentality of the state" and concluded that it may or may not be deemed an "agency of the state" or "state agency" for particular state statutes or particular state purposes and functions, depending on the definitional or other terms of particular statutes. *Cf.* s. 287.012(1), Fla. Stat., defining "Agency" to mean "any of the various state officers, departments, boards, commissions, divisions, bureaus, and councils and any other unit of organization, however, designated, of the executive branch of state government[.]" and s. 287.055(2)(b), Fla. Stat., defining "Agency" as "the state, a state agency, a municipality, a political subdivision, a school district, or a school board."

[4] See Op. Att'y Gen. Fla. 84-21 (1984), concluding that state offices or agencies are component parts of the state which jurisdiction extends to every part of the state, while districts are defined portions or subdivisions of the state for special and limited governmental purposes; and unless legislatively declared to be or designated as an agency of the state, a district is not an agency of the state.

[5] See s. 768.28(2), Fla. Stat., defining "state agencies or subdivisions" subject to the act to include "the executive departments, the Legislature, the judicial branch (including public defenders), and the independent establishments of the state; counties and municipalities; and corporations primarily acting as instrumentalities or agencies of the state, counties, or municipalities, including the Spaceport Florida Authority."

[6] Section 331.302(4), Fla. Stat.

[7] Section 189.403(1), Fla. Stat.

[8] *Cf.* s. 331.302, Fla. Stat., which was amended by s. 1, Ch. 91-265, Laws of Florida, to add a subsection (4), expressing the Legislature's intent that the Spaceport Florida Authority shall not be considered an "agency" for purposes of ss. 216.011 and 287.012, Fla. Stat.