

Department of Transportation, relocation costs

Number: INFORMAL

Date: July 01, 1997

The Honorable Mario Diaz-Balart
Senator, District 37
8890 Coral Way, Suite 215
Miami, Florida 33165

RE: TRANSPORTATION, DEPARTMENT OF--PUBLIC FUNDS--ROADS--payment of relocation costs for non Department of Transportation project. s. 339.09, Fla. Stat.

Dear Senator Diaz-Balart:

You ask for my comments regarding the responsibility of the Department of Transportation (DOT) to provide relocation assistance.

Section 339.09(2) and (3), Florida Statutes, authorizes DOT to utilize transportation tax revenues for, among other things, relocation assistance and moving costs of persons displaced by transportation facility projects. Subsection (2) of the statute authorizes DOT to expend transportation tax revenues for relocation assistance and moving costs of persons displaced by highway construction to the extent required by federal law in order for the state to be eligible for federal highway funds. Subsection (3) provides that DOT may expend transportation tax revenues pursuant to rules adopted by the department for non- federal aid projects.

According to your letter, the 1995 Legislature appropriated two million dollars from the Economic Development Transportation Trust Fund through the Department of Commerce to the City of Miami Beach for "an access road from the Convention Hotel to the Miami Beach Convention Center." [1] The tenants residing in the area who were displaced by the project did not receive relocation assistance from the state. One tenant, who is being represented by Legal Services of Greater Miami, has apparently contacted your office for assistance in obtaining relocation reimbursement.

Section 288.063, Florida Statutes (1995), authorized the Division of Economic Development to make expenditures and enter into contracts for direct costs of transportation projects with the appropriate governmental body. [2] With respect to any contract executed pursuant to section 228.063, the term "transportation project" means a transportation facility as defined in section 334.03(31), Florida Statutes, which was necessary in the judgment of the division (now the Office of Tourism, Trade and Economic Development) to facilitate the economic development and growth of the state. [3] The Department of Transportation may be the contracting agency when the project is on the State Highway System. [4] In addition, upon request by the appropriate governmental body, DOT may advise and assist or plan and construct transportation projects for it.

The Department of Transportation has advised the tenant in question that while the project in

question is a "transportation facility," it is not a *DOT* transportation facility. The department states that it interprets section 339.09, Florida Statutes, and the rules adopted thereunder, as applying only to *DOT* transportation facilities. Since DOT does not consider the project a DOT transportation facility, the department has stated that the tenants are ineligible for relocation costs.

The department's rules, however, provide a procedure for appealing the department's denial of a claim for assistance. Rule 14-66.012, Florida Administrative Code, provides:

Any aggrieved person may file a written appeal with the Department in any case in which the person believes that the Department has failed to properly consider the person's claim for assistance under this rule. Such assistance may include those provisions outlined in 49 CFR, Part 24, and include the person's eligibility for, or the amount of, a payment required under moving and related expenses, or replacement housing payments. The written appeal must be filed not later than 60 days after the person receives written notification from the Department of the claim determination. A person has a right to legal or other representation in connection with his/her appeal, but solely at his/her expense. The Department shall consider a written appeal regard-less of form. Appeals for administrative hearings shall be processed under the provisions of Chapter 120, Florida Statutes.

Accordingly, an individual aggrieved by the department's decision may utilize the above provisions to appeal the decision.

I trust that the above informal comments may be of assistance.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Item 1680AG, Ch. 95-429, Laws of Florida.

[2] Section 288.063(1), Fla. Stat. (1995). The statute was amended in 1996 and these functions were transferred to the Office of Tourism, Trade, and Economic Development. See s. 41, Ch. 96-320, Laws of Florida. *And* see s. 288.063(2), Fla. Stat., setting forth requirements for such contracts.

[3] Section 288.063(3), Fla. Stat. (1995). The current statute, as amended in 1996, contains similar language but refers to the Office of Tourism, Trade, and Economic Development. *And* see s. 334.03(31), Fla. Stat., defining "Transportation facility" as any means for the transportation of people and property from place to place which is constructed, operated, or maintained in whole or in part from public funds. The term includes the property or property rights, both real and personal, which may have been or may be established by public bodies for the transportation of people and property from place to place.

[4] Section 288.063(7), Fla. Stat. (1995). Similar language is now contained in s. 288.063(6), Fla. Stat. (1996 Supp.).