

Local option tax funding transportation disadvantaged

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Subject:

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Mr. Warren H. Jernigan
Chairperson, Transportation
Disadvantaged Commission
605 Suwannee Street, MS-49
Tallahassee, Florida 32399-0450

RE: TRANSPORTATION DISADVANTAGED COMMISSION--COUNTIES--LOCAL OPTION GAS TAX-- TRANSPORTATION, DEPARTMENT OF--local option tax moneys used to fund transportation services for transportation disadvantaged.

Dear Mr. Jernigan:

You ask on behalf of the Transportation Disadvantaged Commission:

May local option gas tax revenues be used to fund specialized transportation for the transportation disadvantaged?

In sum:

Local option gas tax revenues may be used to fund a public transportation system which includes the provision of paratransit or special transportation services to the transportation disadvantaged.

The Transportation Disadvantaged Commission is created in the Department of Transportation to "accomplish the coordination of transportation services provided to the transportation disadvantaged." [1] In order to carry out its purpose, s. 427.013, F.S., in pertinent part, states that the commission shall:

"(3) Develop policies and procedures for the coordination of local government, federal, and state funding for the transportation disadvantaged.

* * *

(5) Serve as a clearinghouse for information about transportation disadvantaged services, funding sources, innovations, and coordination efforts.

* * *

(11) Have the authority to apply for and accept funds, grants, gifts, and services from the Federal Government, state government, local governments, or private funding sources. Applications by the commission for local government funds shall be coordinated through the appropriate coordinating board. Funds acquired or accepted under this subsection shall be administered by the commission and shall be used to carry out the commission's responsibilities.

* * *

(20) Coordinate all transportation disadvantaged programs with appropriate state, local, and federal agencies and public transit agencies to ensure compatibility with existing transportation systems."

Thus, the commission possesses statutory authority to be involved in the coordination of local funding of transportation services for the transportation disadvantaged.

Chapter 336, F.S., generally provides for a county road system as the responsibility of the county commission. Section 336.021, F.S., specifically allows any county, in the discretion of its governing board and subject to referendum approval, to impose a one cent voted gas tax upon each gallon of motor fuel and special fuel sold in such county for the purpose of "paying the costs and expenses of establishing, operating, and maintaining a transportation system and related facilities and the cost of acquisition, construction, reconstruction, and maintenance of roads and streets." [2] Furthermore, the Legislature recognizes that the establishment of such a system "fulfill[s] a public purpose and that payment of the costs and expenses therefor may be made from county general funds, special taxing district funds, or such other funds as may be authorized by special or general law." [3]

As reflected in the preamble to Ch. 72-384, Laws of Florida, creating s. 336.021, F.S., its stated purpose was to promote a "transportation system" which would reduce all aspects of highway administration, the need for roads, highways and parking facilities, and *enhance the service of a transit system* that serves urban-metropolitan counties. It would appear that expenditures to provide special transportation services for the transportation disadvantaged would clearly fall within the stated purpose of enhancing the service of a transit system. [4]

Section 336.025, F.S., authorizes a local option gas tax from one to six cents upon every gallon of motor fuel and special fuel sold in a county and taxed under the provisions of Part I or II, Ch. 206, F.S. [5] Counties and municipalities may use the moneys received pursuant to s. 336.025, F.S., only for "transportation expenditures." [6] For purposes of this section, "transportation expenditures" means

"expenditures by the local government from local or state shared revenue sources, excluding expenditures of bond proceeds, for the following programs:

- (a) *Public transportation operations and maintenance.*
- (b) Roadway and right-of-way maintenance and equipment.
- (c) Roadway and right of way drainage.
- (d) Street lighting.
- (e) Traffic signs, traffic engineering, signalization, and pavement markings.

(f) Bridge maintenance and operation.

(g) Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads."[7] (e.s.)

Clearly, counties are authorized to use local option gas tax moneys to fund public transportation operations. While "public transportation operations" is not defined in Ch. 336, F.S., "[p]ublic transit" is defined in Ch. 341, F.S., The Florida Public Transit Act, as

"the transporting of people by conveyances, or systems of conveyances, traveling on land or water, local or regional in nature, and available for use by the public. Public transit systems may be either governmentally owned or privately owned. Public transit specifically includes those forms of transportation commonly known as 'paratransit.'"[8]

"Paratransit" is defined as

"those elements of public transit which provide service between specific origins and destinations selected by the individual user with such service being provided at a time that is agreed upon by the user and the provider of the service. Paratransit service is provided by taxis, limousines, 'dial-a-ride' buses, and other demand-responsive operations that are characterized by their nonscheduled, nonfixed route nature."[9]

Local public transit, by having paratransit services included within its scope, would appear to encompass services provided to the transportation disadvantaged. Furthermore, providing paratransit services in a public transit system would be part of a public transportation operation by a local government.

Accordingly, it is my opinion that local option gas tax revenues, levied pursuant to ss. 336.021 and 336.025, F.S., may be used, in the discretion of the county's governing body, to provide transportation services to the transportation disadvantaged.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tls

[1] Sections 427.012 and 427.013, F.S. See s. 427.011(1), F.S., as amended by s. 57, Ch. 90-306, Laws of Florida, defining "Transportation disadvantaged" to mean "those persons who because of physical or mental disability, income status, or age or who for other reasons are unable to transport themselves or to purchase transportation and are, therefore, dependent upon others to obtain access to health care, employment, education, shopping, social activities, or other life-sustaining activities, or children who are handicapped or high-risk or at-risk as defined in s. 411.202."

[2] Section 336.021(1), F.S.

[3] Section 336.021(3), F.S.

[4] See AGO 73-63, recognizing that "transportation" is a system and modes of conveyance of persons or goods from place to place.

[5] Parts I and II, Ch. 206, F.S., provide for the taxation of motor fuel and special fuels.

[6] Section 336.025(1)(c), F.S.

[7] Section 336.025(7), F.S.

[8] Section 341.031(3), F.S.

[9] Section 341.031(2), F.S. See *also* s. 427.011(9), F.S., in which "paratransit" is likewise defined.