

Tobacco, payment of attorneys' fees

Number: INFORMAL

Date: July 27, 1998

The Honorable Lawton Chiles
Governor
The Capitol PL 05
Tallahassee, Florida 32399-0001

Dear Governor Chiles:

You ask whether the provisions of Chapter 98-63, Laws of Florida, apply to the payment of attorneys' fees by the Settling Defendants in *State of Florida v. American Tobacco Company*,^[1] either under the Settlement Agreement in that case dated August 25, 1997, or as provided in the proposed Florida Fee Payment Agreement.

Under the Settlement Agreement and the proposed agreement, the Settling Defendants would pay reasonable attorneys' fees directly to the state's private counsel in an amount set by arbitration subject to an annual cap. Section 3 of Chapter 98-63, Laws of Florida, provides in part that "all subsequent payments made by the Settling Defendants in [*State of Florida v. American Tobacco Company*] are funds of the State of Florida and are hereby appropriated to [the Tobacco Settlement Trust Fund], or if such trust fund is not created by law, to the General Revenue Fund." The question has been raised as to whether this language would affect the Settling Defendants' payment of attorneys' fees under either the Settlement Agreement or the proposed agreement.

It is a fundamental rule of statutory construction that in interpreting a statute, the entire statute must be considered in determining legislative intent and effect must be given to every part of the statute as a whole.^[2] An examination of Chapter 98-63, Laws of Florida, as a whole indicates that the Legislature sought to reaffirm that payments required to be made to the state by the Settling Defendants under the terms of the August 25, 1997 Settlement Agreement constituted state funds subject to appropriation by the state Legislature.

Section 1 of Chapter 98-63, Laws of Florida, appropriates funds already paid by Settling Defendants to the state. Section 2 of the act establishes guidelines to be applied to the expenditure of such funds and states in subsection (1) thereof:

"The Legislature asserts its rights to appropriate all funds *paid or payable to the state* through the tobacco settlement." (e.s.)

Subsection 3 of Chapter 98-63, Laws of Florida, requires that funds already paid to the state by Settling Defendants under the terms of the August 25, 1997 Settlement Agreement that had been placed into an escrow agreement be transferred to the state Treasury.^[3] Immediately following is the language in question in the instant inquiry which provides that subsequent payments made by Settling Defendants are state funds and are subject to appropriation.

When read as a whole, it is clear that the language providing that subsequent payments by Settling Defendants are state funds subject to appropriation refers to those payments which are to be made to the state under the terms of the August 25, 1997 Settlement Agreement. Nothing in the act indicates an intent that such language controls monies which are not owed or due to the state but are paid by the Settling Defendants directly to the private attorneys.

While any payments made by the state to the private attorneys under the terms of the contract would be subject to legislative appropriation,[4] the funds under the proposed agreement are being paid pursuant to the Settlement Agreement by the Settling Defendants, not by the state. Nor are such funds derived from state monies owed or due to the state under the terms of the August 25, 1997 Settlement Agreement.

Accordingly, I am of the opinion that the provisions of Chapter 98-63, Laws of Florida, do not apply to the payment of attorney fees by the Settling Defendants in *State of Florida v. American Tobacco Company*, Case No. 95-1466 AH (15th Judicial Circuit, Palm Beach County), as provided in the Settlement Agreement or the proposed Florida Fee Payment Agreement.

Sincerely,

Robert A. Butterworth
Attorney General

RAB/tgk

[1] Case No. 95-1466 AH (15th Judicial Circuit, Palm Beach County).

[2] See, e.g., *T.R. v. State*, 677 So. 2d 270 (Fla. 1996) (all parts of a statute must be read together in order to achieve a consistent whole); *State v. Rodriguez*, 365 So. 2d 157 (Fla. 1978); *Florida Jai Alai, Inc. v. Lake Howell Water and Reclamation District*, 274 So. 2d 522 (Fla. 1973).

[3] Section 4 of Ch. 98-63, Laws of Florida, provides that the Comptroller shall demand payment from the depository institution for the funds referred to in section 3, and if such funds are not forthcoming shall bring an action to ensure the state's title to such funds.

[4] See s. 287.059(11), Fla. Stat., stating that multiyear contracts for private attorneys services are subject to annual appropriations. Also see s. 287.0582, Fla. Stat.