

Transportation Disadvantaged Commission, powers of

Number: INFORMAL

Date: March 11, 1996

Ms. Jo Ann Hutchinson
Executive Director
Florida Commission for the
Transportation Disadvantaged
605 Suwannee Street, MS-49
Tallahassee, Florida 32399-0450

RE: TRANSPORTATION--BOARDS AND COMMISSIONS--authority of Transportation Disadvantaged Commission to require that contracted coordinators and operators have CPR and First Aid certification. s. 427.013, Fla. Stat. (1994 Supp.).

Dear Ms. Hutchinson:

As Executive Director of the Florida Commission for the Transportation Disadvantaged, you have asked whether the Florida Commission for the Transportation Disadvantaged is authorized to require that the providers of transportation services for the commission be certified in CPR and First Aid. Attorney General Butterworth has asked me to respond to your letter.

Based upon the following discussion, it appears that the Florida Commission for the Transportation Disadvantaged is not authorized to impose health and safety requirements on the providers of transportation disadvantaged services.

The Commission for the Transportation Disadvantaged is created within the Department of Transportation[1] for the purpose of coordinating the cost-effective provision of transportation by qualified community transportation coordinators or transportation operators.[2] In carrying out this purpose the commission shall, among other things:

"(2) Establish statewide objectives for providing transportation services for the transportation disadvantaged.

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

* * *

(6) Assist communities in developing transportation systems designed to serve the transportation disadvantaged."[3]

The commission must also prepare a statewide 5-year transportation disadvantaged plan which "addresses the transportation problems and needs of the transportation disadvantaged, which is fully coordinated with local transit plans, compatible with local government comprehensive plans,

and which ensures that the most cost-effective and efficient method of providing transportation to the disadvantaged is programmed for development."[4]

According to your letter, the Commission for the Transportation Disadvantaged is considering adopting a standard which would require drivers to be certified in CPR and First Aid. The contracted coordinators and operators with which the commission deals are very diverse: some are private for-profit transportation companies such as taxi companies, some are quasi-governmental entities such as public transit systems, there are also county governments, and private non-profit organizations such as councils on aging or associations of retarded citizens. All these contracted coordinators and operators provide services for transporting disadvantaged citizens.

The commission is specifically authorized by section 427.013(9), Florida Statutes (1994 Supp.), to:

"(9) Develop standards covering coordination, operation, costs, and utilization of transportation disadvantaged services. These standards shall include, but not be limited to:

(a) Inclusion, by rule, of acceptable ranges of trip costs for the various modes and types of transportation services provided.

(b) Minimum performance standards for the delivery of services. These standards should be included in coordinator and operator contracts with clear penalties for repeated or continuing violations."

However, the areas which these standards should address must be in the nature of such things as the ranges of trip costs for the various types of transportation services provided and minimum performance standards for the delivery of services."[5]

Nothing in Part I, Chapter 427, Florida Statutes (1994 Supp.), would specifically authorize the commission to require certain health and safety training for drivers within the system and a reading of section 427.013(9) does not indicate that such training is within the scope of consideration for the development of standards.[6] The duties of the commission appear to be focused on overall coordination of the transportation system rather than regulation of the qualifications of providers of these services.

Administrative agencies of the state, such as the Commission for the Transportation Disadvantaged, possess no inherent power and may exercise only such authority as expressly or by necessary implication is conferred by law.[7] Further, if any reasonable doubt exists as to the lawful existence of a particular power, it should not be exercised.[8]

The Commission for the Transportation Disadvantaged is not statutorily authorized to regulate the qualifications of the providers of transportation services and no inherent power to undertake such regulation is evident from Part I, Chapter 427, Florida Statutes. Therefore, it would appear that the commission is not authorized to require that persons providing such services be certified in CPR and First Aid.

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

Sincerely,

Joslyn Wilson
Director, Division of Opinions
Assistant Attorney General

JW/tgk

[1] Section 427.012, Fla. Stat.

[2] Section 427.013, Fla. Stat.

[3] *Id.*

[4] Section 427.013(15), Fla. Stat.

[5] See *State ex rel. Wedgworth Farms, Inc. v. Thompson*, 101 So. 2d 381 (Fla. 1958)(the maxim "*noscitur a sociis*" means that general and specific words capable of analogous meaning when associated together take color from each other so that the general words are restricted to a sense analogous to the less general).

[6] With regard to insurance and safety requirements, see Rule 41-2.006, F.A.C., which requires community transportation coordinators and transportation operators from whom transportation service is purchased with local government, state or federal transportation disadvantaged funds, to ensure that their operations and services are in compliance with the safety requirements specified in s. 341.061(2)(a), Fla. Stat. (which prescribes equipment and operational safety standards for bus transit systems).

[7] See, e.g., 67 C.J.S. *Officers* ss. 190, 192 (1978); *Lang v. Walker*, 35 So. 78, 80 (Fla. 1903); *Gessner v. Del-Air Corporation*, 17 So.2d 522 (Fla. 1944); and AGO's 71-28, 75-299 and 78-46.

[8] See, e.g., *White v. Crandon*, 156 So. 303, 305 (Fla. 1934); *Gessner v. Del-Air, id.*