PINELLAS SUNCOAST TRANSIT AUTHORITY
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LEGISLATIVE COMMITTEE MEETING
MINUTES – FEBRUARY 3, 2016

The Legislative Committee of the Pinellas Suncoast Transit Authority (PSTA) Board of Directors held a meeting in the Auditorium at PSTA Headquarters at 9:00 AM on this date. The purpose of the meeting was to approve the January 6, 2016 meeting minutes and receive updates from Van Scoyoc and Gray Robinson. The following members were present:

Ben Diamond, Committee Chair
Doug Bevis
Patricia Johnson
Lisa Wheeler-Brown

Absent
Janet Long, Committee Vice-Chair

Also Present:
Brad Miller, CEO
Bill Jonson, PSTA Board Member
Alan Zimmet, General Council
Steve Palmer, Van Scoyoc Associates (via phone)
Robert Stuart, Gray Robinson (via phone)
PSTA Staff Members
Members of the Public

CALL TO ORDER

Committee Chair Diamond opened the meeting at 9:00 AM.

PUBLIC COMMENT

There were no public comments.

ACTION ITEMS

January 6, 2016 Meeting Minutes – Ms. Johnson made a motion, seconded by Mr. Bevis to approve the minutes. There were no public comments. Motion passed unanimously.

DISCUSSION ITEMS

2/10-2/11 Tallahassee Trip Coordination – Mr. Miller informed the Committee that February 10th and 11th is the Pinellas Regional Chamber's trip to Tallahassee. He said that there will be a coordination meeting on February 5th and a reception on February 10th with planned presentations for February 11th. Mr. Miller mentioned that he would like to schedule PSTA-specific meetings as well and Mr. Stuart indicated that he will try to schedule the meetings.

Clearwater Beach – Tampa International Airport (TIA) Express Strategy – Mr. Stuart reported that Senator Latvala has heard from the Governor's office that putting this item in the budget would be a prime veto target. He said that Senator Latvala's suggestion is to model PSTA's success with the Central Avenue Bus Rapid Transit (BRT) and to work with the Florida Department of Transportation (FDOT) with Senator Latvala taking the lead. Mr. Stuart explained that if this item was vetoed, PSTA would not be eligible to obtain FDOT funds for the fiscal year. Mr. Bevis agreed and also suggested approaching TIA for funding. Committee Chair Diamond suggested having a meeting with the Governor's office to message this as a means for people to get to and from jobs and also for tourists to get to the beach. Mr. Stuart will arrange for a meeting.

Mr. Jonson said that this item was also on Clearwater's agenda. Mr. Miller suggested a joint letter of support with the signatures of the entire Pinellas delegation to the FDOT Secretary or Governor. Committee Chair Diamond mentioned the letters of support that PSTA already has and Mr. Stuart requested copies.

Transportation Disadvantaged (TD) Study – Mr. Stuart reported that Senator Latvala wants to put his focus on the TD Study to get as much money as possible for a quality study and also re-purpose some of the TD money to fill the gaps. Mr. Miller said that Senator Latvala put $200,000 in his budget for the TD Study. Ms. Johnson indicated that she met with Senator Latvala and he was very interested in PSTA's TD ridership numbers and the fact that the Authority works closely with other agencies such as the Juvenile Welfare Board (JWB) and PARC to provide TD transportation. Committee Chair Diamond asked if there was a Pinellas representative on the TD Commission and Mr. Jonson suggested approaching them for help and possibly collaborating with other areas/counties that are short on TD funds.

Open-Carry Legislation Impacts on PSTA – Mr. Stuart gave a quick update on the open-carry bill and stated his opinion that the full open-carry bill will not pass this year.

Mr. Zimmet indicated that he will craft a memo on the open-carry issue relating to buses in response to Board member Welch's question. Mr. Miller added that there are signs posted on the buses and the Bus Operators are trained to report anyone displaying a weapon.

2/24 Board Meeting Federal Affairs Presentation – Mr. Palmer reported that Harry Glenn, Van Scoyoc, will be attending the February 24th Board meeting. He provided an update on the federal issues and indicated that the Federal Transit Administration (FTA) is focused on the implementation of the Fast Act, adding that the Formula Funds will continue to flow as usual. Mr. Palmer stated that the President will be submitting his last budget request to Congress on February 9th which does affect PSTA's projects indirectly with the FTA Small Starts program. He will report back on what the budget proposal contains and how it affects PSTA in the coming year.

Legal Opinion on Government Affairs – Committee Chair Diamond indicated that this issue was brought up at the January Board meeting. Mr. Zimmet said that the Board has heard from Tom Rask on a number of occasions about whether PSTA legally can hire a lobbyist. He spoke about PSTA's Special Act which grants the Board permission to enter into contracts and also gives the Board the authority to exercise all powers necessary, pertinent, convenient, or incidental to carry out the purposes of PSTA.

Mr. Zimmet indicated that these are very broad powers that, in his opinion, include contracting with a lobbyist. He added that the Attorney General has said that a county has the authority to hire a lobbyist, under the Constitution which provides, "the governing body of the County shall have the power to carry on County government." The Attorney General interprets that language to say that the County can hire a lobbyist. Therefore, in his opinion, if that broad provision allows the County to hire a lobbyist, PSTA's broad grant of powers permits PSTA to hire a lobbyist.

Mr. Zimmet referred to a detailed memo written by David Smith, General Counsel for HART, stating that he agrees with Mr. Smith's description of the Attorney General opinions. He also spoke about PSTA's answer to Mr. Rask's litigation in 2013 challenging PSTA's contract with Gray Robinson for lobbying services.

At Committee Chair Diamond's request, Mr. Zimmet summarized HART's stance and how that might impact Mr. Zimmet's analysis. Mr. Zimmet explained that HART was created with a general law, which is a statute that allowed for the creation of regional

transit systems. Their statute is slightly different than PSTA's in that PSTA is granted more powers than HART.

Mr. Miller indicated that the Legislative Committee is designed to provide assistance to the PSTA Board. He said the question is whether to ask Mr. Zimmet for a memo similar to Mr. Smith's and ask for guidance for further action. Committee Chair Diamond suggested that Mr. Zimmet give a summary of Mr. Smith's opinion at the Board meeting or refer the Board to today's meetings minutes and the documents so they can read them and follow up directly with Mr. Zimmet if they require additional information.

Mr. Miller said that he will put together a memo that would include Mr. Smith's memo, the 2013 lawsuit response, and a summary from this meeting. Committee Chair Diamond stated his belief that Mr. Eggers' request was fulfilled by today's discussion with Mr. Zimmet.

FUTURE MEETING SUBJECTS

The Committee was provided with a list of upcoming meeting subjects.

Mr. Miller responded to Committee Chair Diamond's question on the timeline for the State Government Affairs procurement. There was discussion about Senator Latvala's wish that HART and PSTA work more closely together as a region, and Mr. Miller suggested more joint meetings with HART and the MPO with the possibility of developing a Tampa Bay region state priority list. The Committee requested copies of the past two merger studies that were conducted.

OTHER BUSINESS

No other business was discussed.

ADJOURNMENT

The meeting was adjourned at 10:30 AM. The next Legislative Committee meeting will be held on March 2nd at 9:00 AM.

TO: Katharine Eagan **CLIENT-MATTER NO.:** 551050-1

CC: Dara Chenevert

FROM: David L. Smith

DATE: January 22, 2016

SUBJECT: HART Statutory Authority to Contract for Lobbying Services

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This memorandum is a preliminary opinion and is subject to clarification, extension or revision based upon additional information that may be ascertained pursuant to conversations with you as the CEO of the organization and Jeff Seward as the CFO.

I. The Question

This memorandum is in response to your inquiry regarding whether it is lawful for HART to enter into a contract for the provision of lobbying services.

II. Background

This question arose in part due to the dispute unrelated to HART about whether the PTC, as a special district could enter into a contract with a government relations business entity for lobbying services. One of the parties to the dispute asserted that the PTC could not employ a lobbyist by virtue of an Attorney General Opinion, i.e. AGO 2014-01 issued on February 13, 2014.

As a consequence, I have reviewed AGO 2014-01 and the authority recited therein in order to evaluate whether HART can legally enter into a contract for the provision of lobbying services. The short answer is that I believe that pursuant to a correct understanding of the applicable legal authority and the facts as I understand them HART can do so.

III. Anomalies of Attorney General Opinions

The problem is that oftentimes Attorney General Opinions are very conclusory in nature and have unqualified statements that are not supported by the underlying law on which the Attorney General Opinion purports to rely. That requires that one identify the case law on which the opinions ostensibly rely and review it to determine if it is accurately cited and whether it applies to the set of facts to which we seek to apply it by extension. Based on that process, this is my considered legal opinion which regrettably is not infallible. This memorandum provides my analysis so you will know the basis of my opinion. Accordingly, although Attorney General Opinions suffer from the limitations described herein, it may be the Board's decision to seek our own Attorney General Opinion with regard to the specific facts governing HART. As you will see below, facts make the law and the process of legal analysis is the extrapolation of the law as

understood in light of a specific set of facts to a new set a facts to which it has not yet been applied. Such an analysis is analogical and not ineluctable.

IV. Limitations on Precedential Weight of Attorney General Opinions

Legal opinions are based upon analyzing cases that have been decided or opinions issued based on the facts that are before the tribunal. The challenge is to find such opinions dealing with a situation similar to or perhaps even almost identical to the case to which you intend to apply those opinions. Accordingly, it is important to remember that despite the understanding of laymen, cases are decided and are limited to the facts of the cases and the general conceptual analysis is simply the analytical process applied to those facts to explain the basis for the outcome. As such, all opinions are limited to their facts, including AGO 2014-01.

An additional factor with regard to Attorney General Opinions is that they are not binding law, but are rather deemed to be "persuasive". A court opinion by contrast, has the impact of law and is legally binding on those subject to its jurisdiction. Accordingly, Attorney General Opinions are significantly more attenuated than case law in regard to the extent to which they are controlling. That makes it imperative to review and analyze the case law on which such opinions are based to find out what weight to give the "persuasive authority" of an Attorney General opinion.

V. Attorney General Opinion AGO 2014-01

In this Opinion the Attorney General found that the Hillsborough County Civil Service Board's "enabling legislation does not ***directly*** or ***by implication*** authorize the Board to contract with a lobbying firm to represent its interest before the Florida Legislature."[1] The Attorney General Opinion is based upon the view that since the District was statutorily created it could "only exercise such powers as have been ***expressly granted*** by statute or must ***necessarily be exercised*** in order to carry out an ***express power***."[2] The legal authority for this holding is cited in footnote 7 of the Opinion.

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1 See P. 1, emphasis supplied, i.e. not in original. Hereafter we will use (e.s.). Later in the Opinion the Attorney General says "more specifically, this office has stated that public funds may not be expended by public entities for lobbying purposes unless expressly and specifically authorized by state law." This variation of a holding is discussed in more detail in Section VI C. The only authority it cites for that proposition is Attorney General Opinion AGO 77-08, and authorities cited therein. The anomaly is since the question before the Attorney General is the expenditure of public funds for lobbying purposes, if that issue was subject to a different, more categorical analysis, why are they inquiring into authority "by implication" unless it remains relevant.

2 See P. 2, (e.s.). This portion of the analysis is clearly tied to legislative intent as is evident in the statute creating the entity. That seems to suggest that the unqualified statement regarding the expenditure of public funds on lobbying expenses is categorical. A review of the law, however, renders that view untenable. It is clearly the legislative intent that must govern the roles, authority, powers and capacity of these legislatively created entities.

Additionally, the Attorney General went on to say that any "***reasonable doubt*** as to the lawful existence of a particular power sought to be exercised must be resolved against the exercise thereof."[3] This "reasonable doubt" analysis must be related to the requirements associated with legislative delegation of authority and the legislative intent as is evident in the legislative act creating that authority. That is, a legislature must be clear in its delegation of authority or it provides too much discretion and has "improperly delegated legislative authority", which is not permissible. Since it is also a maxim of statutory interpretation to try to effectuate the purpose of the legislature, a "reasonable doubt" must in fact be a clearly reasonable doubt and not speculative or based upon conjecture. In any event, the authority for the "reasonable doubt" component of the holdings is cited as contained in footnote 8 of the Opinion.

The Opinion goes on to indicate that there are numerous Opinions of the Attorney General that "adhere to the general principal that public funds may not be expended by a district or other statutory entity unless there is a "specific statutory provision authorizing such expenditure."[4] The authority for this holding is cited as contained in footnote 10.

Finally, the Opinion stated that the Attorney General had previously held that "public funds may not be expended by public entities for ***lobbying purposes*** unless ***expressly and specifically*** authorized by state law."[5] The authority for this proposition is cited as contained in footnote 11. On its face, this appears to be a separate analysis for a separate issue. That is, the expenditure of funds pertaining to lobbying is subject to a different analysis than that determining the existence of authority or the expenditure of funds generally. This apparent distinction, however, disappears upon review of the underlying authority as will be seen below.

Based on the structure of the Opinion there appears to be three different categories for analysis. First is an analysis regarding the power or authority of an entity to act. Second is the authority of that entity to expend funds. Third is the authority of that entity to spend funds for lobbying purposes. Unfortunately, a review of the various authorities cited for these propositions do not support such a separation of analysis. There are limited instances in the authorities cited in which the obligations of an auditor or some other governmental entity is implicated. Those cases are limited to those situations and do not present a general statement with regard to all special

3 See P. 2, (e.s.).

4 See P. 2. It is unclear how this standard relates to the standard described above dealing with the "exercise of powers. It would seem that no powers could be exercised without the expenditure of funds so it could not be the expenditure of funds in and of itself that distinguishes this standard. The distinction seems to indicate that when it comes to the expenditure of funds analysis regarding implied authority granted by the statute to necessarily exercise an express power is not applicable. That would not make sense because that would eviscerate legislative intent as the standard and it is uniquely not the purview of the judiciary "or the Attorney General" to contravene a constitutionally valid legislative act.

5 See P. 2, (e.s.).

districts. Clearly, even a legislatively created entity cannot spend funds contrary to the obligations of the Florida Constitution or the validly delegated legislative authority in creating that entity. As such, the overriding point at issue is the legislative intent in creating the entity being analyzed. Any separate constitutional prohibition would apply in its own right.

In order to understand the scope of the AGO 2014-01 Opinion we need to review the facts on which the decision was based. The best place to start is with the general power or authority to act.

The specific statutory language relied on by the Attorney General was that the act creating the Civil Service Board indicated that the purpose was to "establish a system for the formulation and implementation of procedures to ensure the uniform administration of the classified service" for the County.[6] The Opinion indicates the enumerated powers and duties of the Board were those specifically authorizing the Board to "employ, discipline and terminate a director and such other personnel as necessary to carry out the purposes of this act and within the scope of its budget." The Opinion went on to say the Board also has specific authority to "employ, discipline and terminate or ***contract for legal counsel*** (e.s.) as may be needed and within the scope of its budget" and to conduct and to contract for performance audits as required by law. These were the only express powers granted pursuant to the act according to the Opinion. The Attorney General found that given that "limited purpose" along with the distinction between "who may be employed by the Board and the ability to contract for legal counsel", there was no "***direct or apparent*** (e.s.) authority for the Board to contract for lobbying services."[7] Accordingly, the Attorney General concluded that the Civil Service Board was not authorized "to contract with a government relations business entity that will represent the interests of the Board in the State of Florida legislative process."

Essentially, this should be the extent of AGO 2014-01. If the Civil Service Board did not have the authority or power to enter into such a contract (because its contracting authority was limited to the retention of legal counsel and auditing services) the Attorney General did not need to get to the issue of whether the expenditures were authorized and whether specific expenditures on lobbying were authorized. Unfortunately, there are recitals regarding general conceptual understandings of the law and then a conclusory statement or finding with respect to the specific question asked. Again, it is important to remember that the scope of an Attorney General Opinion is limited to the scope of the question asked. Therefore, the critical components of that Opinion will have to be carefully reviewed in order to ascertain how the recited authority would be applied to the set of facts applicable to HART. The statutory language with respect to HART could be different in terms of the "purposes" for creating the legal basis for HART, the specific powers and authorities granted and the objectives to be obtained.

6 See P. 2.

7 See P. 2.

According to the opinion in order to exercise any given power the enabling legislation must have either "*directly* ***or by implication*** authorized the Board to contract with a lobbying firm". The term "directly" seems pretty clear, but what is "by implication"? The opinion addresses this issue in part by indicating that the district may only exercise such power if it has been "*expressly granted* by statute or *must necessarily be exercised to carry out an express power*". (e.s.) As indicated, this statement is ostensibly supported by the authority cited at footnote 7. We will analyze that "authority" below to see precisely what it does mean.

In sum then, the opinion itself finds that the Civil Service Board did not have the "power" to enter into a contract for lobbying services because the enabling act only created the Board for the "limited purpose" described and limited its contracting power to contracts with legal counsel and audit services; and, therefore, there was "no direct or *apparent authority* for the board to contract for lobbying services."

VI. Underlying Case Law and Additional Attorney General Opinions

In order to make sure we have fully evaluated the limitations and implications of the applicable law, we reviewed the authority cited by the Attorney General in AGO 2014-01 in terms of the purposes for which it was cited. Below is a statement of each component of AGO 2014-01 and a review of the supporting authority and analysis of its applicability.

A. *A district may only exercise powers expressly granted by statute or necessarily exercised to carry out an express power.*

The Opinion indicates the legal authority cited at footnote 7 stands for the proposition that any given entity is "limited to the powers granted." While that appears to be accurate in part, that position may be better viewed as one aspect of interpreting legislative intent. Understanding that authority will allow us to evaluate to what extent it should be extended to the facts (and legislative intent) governing HART.

The Florida Supreme Court in *Forbes Pioneer Boat Line v. Board of Commissioners of Everglades Drainage District,* 83 So. 346 (May 30, 1919) held that the drainage district could not collect a toll on a public canal because there was no "grant from the sovereign either in ***express*** terms or by ***necessary implication***." (e.s.) The Court found that the drainage board was created for the purpose of constructing canals to drain the lands making them habitable and fit for use and to have the ability to assess taxes on property benefitted by said drainage in order to complete this reclamation. According to the Court, since the sole purpose of the act was to drain and reclaim the swamp on overflowed lands that there was "***no intention of the Legislature*** to permit the Board of Drainage Commissioners to construct canals or build locks thereon for ***commercial purposes***" (e.s.). As such there was no express or implied authority to levy a toll upon boats passing through locks created as part of the drainage system. It is important to note that since the task before the Court was to determine what the statute specifically allowed either

directly or by implication of the assessment of tolls, it was imperative that the Court review and identify the "legislative intent" behind that statute. This issue of "legislative intent" is actually the primary legal concept at issue throughout. At all times therefore for purposes of our analysis, we need to focus on what the act or statute itself says about the powers and purpose of HART.

It is unclear from reviewing the case law and the related attorney general opinions whether they intend to make a distinction between special districts created to undertake a governmental activity from a regulatory or administrative body that is intending to implement and regulate a legislative program. If that difference is significant, that difference is not addressed in the various opinions and case law described in this memorandum.

In *Halifax Drainage District of Volusia County v. State*, 183 So. 123 (1938), the Florida Supreme Court repeated the refrain that a drainage district (and inferentially any special district) has no power or authority other than that conferred by statute. The *Halifax* case dealt with the limited ability of the drainage district to tax and assess properties for improvements made. That is, pursuant to the enabling statute, the power to levy and collect taxes on the lands in the drainage area was "restricted to the amount of benefits shown by the plan of reclamation." The *Halifax* case therefore dealt with an effort by the drainage district to literally act in a manner contrary to the legislation creating the district. There was no authority to create other financing mechanisms or create additional funds for use in the district, except pursuant to the express provision that it must be limited to "the amount of benefits shown by the plan of reclamation." Contrary to being a case dealing with insufficient authorization of power, this appears to be a situation where the district was acting directly contrary to the legislative intent.

Interpretation and enforcement of legislative intent was also the determining factor in *State Ex Rel Davis v. Jumper Creek Drainage District*, 14 So.2d 900 (1943) in which the Florida Supreme Court found the grant of authority to assess and levy taxes and apply them to bond debt was only as provided in the statute and the creation of bonds different from that provided in the statute was simply not authorized.

Roach v. Loxahatchee Groves Water Control District, 417 So.2d 814 (4th DCA, 1982) held that a flood control district had no power to refuse permission to allow a landowner to build a bridge over a canal unless the bridge interfered with the water flow that the district had the authority to regulate. Again, the determining factors specifically relate to the scope of the legislative intent in creating the district at issue. The district in *Loxahatchee Groves* was created solely for the purpose of controlling the flow of the water and related flood diminishment and did not allow the district to extend its authority beyond the powers and functions necessary to accomplish those purposes.

At least two of the four Attorney General Opinions cited for this "limitation to powers granted" proposition are better understood as an interpretation of legislative intent than a result of a limited grant of powers. AGO 89-34 dealt with the limitation on the collection of impact fees

and the requirement that they be segregated for use to defray the impact of *new construction* and not for other purposes of the fire district. That is not only based upon a limitation contained in the enabling statute, but a constitutional and statutory principle regarding the allocation of burden and benefits on special assessment districts. In that instance, the plain language of the statute indicated that the legislature limited "the expenditure of impact fees to new facilities and equipment, or portions thereof, required to provide fire protection and related emergency services to *new construction.*"[8] Again the conceptual analysis is better understood as one of interpreting legislative intent.

Pursuant to the opinion rendered in AGO 96-66 the Lake St. Charles Community Development District was found to not have the authority to construct a cable television service for its community because it was not within the scope of the authority granted under Chapter 190 or by implication necessary to carrying out those powers that were expressly granted.

AGO 98-20 found that St. Johns River Water Management District could in fact purchase all of the outstanding stock of a private for-profit corporation which owned property and immediately dissolve the corporation thereby acquiring fee title even though the statute only specifically indicated that it had the right to acquire fee title in property and easements by purchase, gift or devise. That is, the acquisition of the property by virtue of acquiring a corporation was seen as an implied power or apparent power to carry out powers that were expressly granted. Accordingly, this case gives us a clear understanding of what action may be taken that is "***necessarily exercised*** in order to carry out an ***express power***" (emphasis supplied). Once again, the dispositive analysis dealt with the legislative intent in creating the entity rather than the failure of the specific language to contain the specific description of that power.

Finally, in AGO 2004-26 Santa Rosa Island Authority could not expend funds to assist a charter school providing educational services within the district because its enabling legislation contained nothing authorizing the expenditure of funds for educational purposes. This opinion does apply the "limited to powers granted" analysis. Although this opinion is also cited for the proposition that any reasonable doubt should be resolved against the exercise of the power it seems instead to turn once again on interpretation of legislative intent. As the opinion itself said the legislation "***contained nothing***" authorizing expenditure of funds for educational purposes. There was nothing in the statute from which a reasonable inference of apparent authority could have been derived. Therefore, there was no "reasonable doubt" that needed to be resolved. Once again, this case really stands more for a maxim of correct legislative interpretation than it does for a presumption of inclusion or exclusion.

The *Halifax* case referenced above is also cited for this reasonable doubt proposition. As is evident from the analysis of the *Halifax* case, however, there was nothing in the statutory grant of authority that created a doubt. That is, the legislative intent was clear from the express terms

8 P.2.

of the statute. The case of *State Ex Rel Greenberg v. Florida State Board of Dentistry*, 297 So.2d 628 (Fla. 1st DCA, 1974) was actually decided on due process basis although it did involve the Board of Dentistry carrying on a generalized investigation rather than a specific administrative hearing investigation as authorized by law.

The *City of Cape Coral v. GAC Utilities Inc. of Florida*¸ 281 So.2d 493 (Fla. 1973) dealt with the limitation of powers by the Public Service Commission since it was a creature of statute and its powers, duties and authorities were those expressly or impliedly granted. The case in fact hinges more on the view that since the Public Service Commission was a creature of the state legislature, the state legislature could alter the scope and reach of the regulatory power of the Public Service Commission. This case does not really provide support for the proposition it was cited as supporting.

AGO 2002-30 actually stands for the proposition that specific statutorily limited compensation for commissioners of $4,800.00 per year, did not include the authority to additionally provide benefits such as medical insurance, accidental death or disability insurance and the like. Clearly, when the legislature speaks as to a maximum amount of compensation to be provided, there is a very strong implication that any additional form of compensation is prohibited let alone not authorized. Once again this opinion seems better understood as correctly interpreting legislative intent.

Attorney General Opinion AGO 2004-48 deals with a water control district's ability to lease, sell or otherwise convey or dispose of its surplus real property for the purpose of raising revenue for the district. The Attorney General in this opinion read the language "other revenue-raising capabilities" as being tied to the language adjacent to it in the statute which dealt with non-ad valorem assessments in bond issues. Accordingly, that fact along with the fact that other water control districts had specifically been granted the right to sell surplus property as part of their charter led the Attorney General to conclude that that was not a power granted in the enabling legislation for East County Water Control District. The language the Attorney General stated to indicate their position was that any such powers "as had been expressly granted by that act or must necessarily be exercised in order to carry out an express power" indicates the extent of the implied powers. Attorney General Crist indicated that "any implied power must be necessarily *implied from the duty that is specifically or expressly imposed* by statute." The use of the term "duty" rather than the term "powers" or "authorization" makes this opinion even clearer that the issue is really one of legislative intent and the delineation of powers granted is just one of those components of legislative intent.

B. ***Public funds may not be expended by a district unless there is a specific statutory provision authorizing expenditure.***

There is one case and eight Attorney General Opinions cited in the Opinion as supporting the above-referenced proposition. The case actually deals with a special legislative appropriation issue.

That case, *Florida Development Commission v. Dickinson,* 229 So.2d 6 (Fla. 1st DCA 1969), is cited in the Opinion for the proposition that in order to perform a function for the state or to expend money belonging to the state, the person seeking to so spend must find and point to a constitutional or statutory provision authorizing him to do so. This case really deals with the funding requirements attendant to expenditure of funds by the state legislature through its budgeting process. In this instance, the funds were simply not appropriated by the legislature and, therefore, were not authorized. In *Dickinson*, the Comptroller of the State refused to pay for the costs incurred in connection with the production and broadcast of a television program in which Governor Kirk spoke on the status of education in Florida. The Comptroller refused to make that payment on the grounds that the Development Commission did not have the authority to incur the expense and it did not relate to the scope, powers and duties of the agency. This case turns more on the obligations of the comptroller with respect to its constitutional duty to examine, audit and adjust and settle accounts of state officers and not disburse public monies not authorized by law. The case does not describe the grant of powers to the Development Commission but did find that the Development Commission was not empowered by the legislature to inject itself into the public school system of the state and therefore the expenditure was improper. Once again, the focus is on the correct interpretation of legislative intent.

In AGO 88-52 the question was whether a non-chartered county could expend county funds for lobbying purposes. The opinion found that if appropriate findings were made that the expenditure of county funds for lobbying serves a county purpose and is in the public interest then the county may expend county funds for lobbying.

The Attorney General Opinion AGO 77-08 deals with the expenditure of the Orange County Civic Facilities Authority to expend funds for a lobbyist in aiding the passage of a resort tax by the Legislature in the 1977 legislative session. The opinion dealt in part with the authority of the Orange County Civic Facilities Authority to expend funds in that fashion received from the County.[9] Funds provided by the county were limited by the terms of the grant to expenditures "for maintenance of the facilities and for the payment of employees' salaries, operating, and planning expenses and other necessary expenditures." The term "other necessary expenditures" had to be interpreted in light of the words that preceded it according to the Attorney General and therefore are only expenditures relating to salaries, operating and planning expenses were considered to be within the general term and therefore the Authority lacked the authority to spend the money for a lobbyist. Specifically in determining what sort of authority has been

9 Unlike HART, the Orange County Civic Facilities Authority was funded by the County. HART has its own source of funds, separate budget process all of which is reviewed and approved pursuant to public hearings that include the authorization of the expenditure of those funds as a public purpose.

delegated by the statute, the opinion indicates that such a power could arise "only when ***some substantial basis of authority*** (e.s.) for the exercise of the power appears in a statute" (e.s.). The opinion went on to say that doubts cannot be resolved in favor of a statutory power "when there is ***no enactment*** (e.s.) *which can be a basis* for such asserted delegated power."[10]

AGO 75-120 dealt with whether the divisions of tourism and economic development have the authority to make expenditures from the "paid advertising and promotion" appropriations for the purchase of transportation, meals, accommodations and other similar items for potential investors, tourism officials and the like. Among other things, the opinion specifically found that the legislature had not appropriated money for such expenditures in the general appropriations act.[11] As such, it was not found to be specifically authorized by virtue of the grant specifying the exact expenditures that were authorized there was no room to imply or infer the ability to make additional expenditures on other items such as the ones mentioned above. In this opinion, essentially the Attorney General found that there was no basis in the statute from which such ability could be inferred. The applicable test is summarized succinctly in this opinion at page 5 of 13; it states the following:

> A presumption in favor of action taken under an asserted delegated statutory power can arise only when ***some substantial basis*** *of authority for the exercise of the power appears in the statute*. Doubts cannot be resolved in favor a delegated statutory power *when there is* ***no enactment*** *that can be a basis* for such asserted delegated power. (Emphasis supplied.)

One of the cases cited in AGO 75-120 is the Florida Supreme Court case identified as *State v. Atlantic Coastline*, 47 So. 969. The Court there indicated that railroad commissioners can only exercise such authority as is "legally conferred by express provisions of law, or such as is by ***fair implication and intendment incident to*** and included in the ***authority expressly conferred*** for the purpose of carrying out and accomplishing ***the purpose*** for which the office were established." 47 So. at 978 (e.s.). That same court went on to say that if there is "a reasonable doubt as to the lawful existence of a particular power that is being exercised . . . the further exercise of the power should be arrested." (*Id* at page 979.) Again, it is clear that the test is legislative intent. That intent should be discerned by looking at the ***purpose*** for which the entity has been created in order to determine whether there is any ***fair implication*** that the ***power or authority*** being evaluated is ***incidental to the accomplishment of that purpose and not inconsistent with the general powers granted***. Only if there is a reasonable doubt, i.e. a reasonable doubt must exist, is there a determination against the exercise of the power.

10 See P. 3. This of course points to the need to carefully review the statutory authority for HART as embedded in the statute and in the Charter.

11 See note 4, *supra* and text accompanying note 8.

Clearly, as throughout this entire analysis it comes down to a careful reading of the statutory authority and powers granted and whether the retention of a lobbyist is appropriate to a delegated statutory power that can be the basis for that asserted delegated power. In this opinion, the relevant statute clearly did not specifically state there is authority to purchase meals and transportation for potential investors and to finance expenses at special meetings. The question therefore is whether it arises by necessary implication. This opinion turned on the fact that there is a prohibition on the use of taxing powers to aid a private person. See Article VII, Section 10 of the Florida Constitution, and the use of taxing powers is restricted to expenditures that are used to defray expenses of the state, not private persons, firms or corporations.[12] See Article III, Section 12. Accordingly, this opinion is really not based upon interpreting the "express" or the "implied" authority to expend the funds for the purpose at issue but on State Constitutional requirements.

Attorney General Opinion AGO 68-12 held that the expenditure of funds for entertainment purposes did not appear to be authorized by the applicable law. Essentially, this deals with the expenditure of state funds by state officers and prohibits the expenditures except those "pursuant to appropriations made by law." The test was whether an expenditure was "under the express authority of a legislative enactment or an express constitutional provision, and expenditures implied therefrom as being necessary for carrying out of the legislative will." Accordingly, expenditures themselves would be evaluated in terms of legislative intent. The Attorney General found no provisions in Chapter 378 authorizing such expenditures. Additionally, this case dealt with the lack of transparency with respect to the expenditures and their dubious nature by virtue of that fact.

Attorney General Opinion AGO 2001-28 actually dealt with an issue relating to dual office holding and is not really germain to this analysis. It nonetheless was cited in footnote number 10, in AGO 2014-01.

AGO Opinion 78-12 indicates the community college district boards are limited to the adoption of salary schedules and the fixing of the salaries of its employees on the basis pertaining to those salary schedules. That is, the salary schedule was the sole instrument identified for determining compensation for the employees. Accordingly, any additional compensation would have to be expressly authorized by statute or state board of education regulation authorized by law. Essentially, this opinion evaluated whether there was any implied authority to provide these additional benefits and the finding was that the statutory provision was clear that the community college was limited to an annual adoption of a salary schedule for employees.

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12 See note 4 *supra* and text accompanying note 8. The issue with HART would not be the use of funds provided to it by some other entity pursuant to a delegation. The issue with HART is whether or not they have expended funds consistent with their approved budget enacted pursuant to the public hearing process and approval of the Board in furtherance of a power it has been lawfully delegated.

Similarly under AGO 073-148 it found that neither a sheriff nor a county can pay or authorize the payment of a clothing and maintenance allowance for plain clothes deputy sheriffs without express legislative authority. This opinion revolved around the issue that public funds could not be used for a private personal benefit. As such, the purchase of uniforms for uniformed officers was consistent with an agency purpose because those uniforms were solely for a public purpose but a voucher or allocation for clothes for plain clothes officers was not. This distinction reinforces the concept that the expenditure of funds for the public purpose for which the entity was created is legitimate and authorized but the expenditure of fund for personal use is not.[13] The purpose for which the entity was created is dispositive in any analysis of the expenditure of funds.

AGO 67-20 actually deals with the expenditure of funds to cover per diem expenses under Chapter 112, which is just another variant of statutory intent.

AGO 74-299 indicated that no funds of the district can be used for purposes other than "the administration of the affairs and business of said district." As such, the district was not authorized by the enabling legislation to utilize district funds to purchase life or health insurance for district employees. The holding was based upon the fact that "only such powers as are expressly given or necessarily implied because essential to carry into effect those powers expressly granted" are exercisable.

Also cited for support of the proposition of this Section III B is the *Dickinson* case cited above. Clearly, that case was simply limited to the fact that there was no legislative intent to provide the expenditure of funds for the purpose of creating the Claude Kirk video dealing with education as part of the Florida Development Commission.

C. ***Public funds may not be expended by public entities for lobbying purposes unless expressly and specifically authorized by state law***

There is only one Attorney General Opinion and no case law cited as the basis for this proposition. As we have seen below at page 9, however, AGO 88-52 also expressly deals with the expenditure of funds for lobbying purposes. The cited opinion AGO 77-08 was also discussed above. It dealt with the fact that the Orange County Civic Facilities Authority was ***not authorized by the County*** to retain a lobbyist in order to promote the passage of a resort tax. It was not a blanket prohibition on the retention of lobbyists as is contained in Florida Statutes 11.062, which statute does not apply to HART, but was instead an analysis of the scope of the specific grant and appropriation of funds by Orange County.[14] This Attorney General Opinion does not stand for the proposition that no public money could be expended for lobbying

13 See note 4 *supra* and text accompanying note 4.

purposes. None of the case law and none of the other Attorney General Opinions provide such a specific blanket prohibition.[15]

This AGO has interesting implications for HART. Specifically, HART was created by Charter among Hillsborough County, the City of Tampa and the City of Temple Terrace. That Charter incorporated all of the provisions of the enabling statute Chapter 163 in terms of the powers and authority granted to HART. By virtue of creating the Charter, all of the constituent local government entities had to determine that HART was created for a valid public purpose. Additionally, HART expends funds pursuant to a budgeting process that parallels that of the cities and counties. That budget is then provided to the constituent local governments for their review. HART has its own ad valorem taxing authority pursuant to charter and approval by referendum. As such, it would seem that HART is analogous to the County in AGO 88-52 in that it may make expenditures of public funds for lobbying to the extent they have found it to be a public purpose in furtherance of HART's mission as legislatively established. HART has both a separate committee that oversees the legislative review process and a procurement in which lobbying services are obtained. Those actions as well as the actions by the Board in approving the budget would seem sufficient to constitute a finding of public purpose for the expenditure of funds for lobbying, so long as that is consistent with the purposes for which HART was created.

Based upon all of the foregoing, it is clear that the dispositive issue with regard to HART is going to be the HART Enabling Act, as incorporated into its Charter, in order to evaluate whether HART has the ability to hire and pay for lobbying representation.

VII. **HART Enabling Act**

Since as we have seen the language of the enabling legislation is critical, it is important to look at the applicable statute. For clarity, it is important to remember that HART was specifically created pursuant to a Charter formed by Interlocal Agreement among Hillsborough County, the City of Tampa and Temple Terrace. That agreement, however, is pursuant to state statute authorizing the creation of regional transportation authorities. The charter creating HART contains a list of its powers and authority that essentially incorporates the provisions of the state enabling act.

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14 Again, as elaborated in note 4 and in the text accompanying note 4, HART is not relying upon a grant obtained from a separate entity to pay for the lobbying expenses. The funds are obtained pursuant to the budgetary process and public hearing approving same. This is the case cited above in which the phrase "other necessary expenditures" could not be extended to the political support of a tourist tax when it was really limited to the "maintenance of the facilities and for the payment of employees' salaries, operating, and planning expenses and other necessary expenditures."

15 AGO 85-04 cites AGO 77-8 as a blanket prohibition, but as we have seen above it depends upon whether there has been a finding that such expenditure of funds is for a public purpose and is consistent with the authority and powers granted to such an entity.

HART is a special district created pursuant to the requirements of Florida Statutes 163.567. The purposes and powers of HART are summarized in Florida Statutes 163.568. Specifically under subsection (1) HART "is granted the authority to purchase, own, or operate, or provide for the operation of, transportation facilities; to contract for transit services; to exercise power of eminent domain . . . ; to conduct studies; and ***to contract with*** other governmental agencies, ***private companies*** and individuals." (e.s.) At the outset, the ability to contract with third person private firms seems to be almost unlimited for HART in contradistinction to the severe limitations recited by the Attorney General for the Hillsborough County Civil Service Board in AGO 2014-01.[16]

Additionally, pursuant to subsection (2) the Authority is granted the right "to exercise ***all powers necessary, appurtenant, convenient, or incidental to*** the carrying out of the ***aforesaid purposes, including***, but not limited to, ***the following rights and powers***." (e.s.) Among those following rights and powers is the right "to acquire and operate, or provide for the operation of, local transportation systems, public or private, within the area, the acquisition of such system to be by negotiation and agreement between the authority and the owner of the system to be acquired." F.S. 163.568(2)(e). Additionally, HART has the ability "to *make contracts of* ***every name and nature*** and to execute all instruments *necessary or convenient* for the carrying on of its business." (e.s.) F.S. 163.568(2)(f). Again, this is the opposite of the severe limitation cited by the Attorney General in its opinion regarding the Civil Service Board.

An additional relevant right and power is that HART may "***without limitation***, . . . borrow money . . . , *accept gifts or* ***grants or loans*** of money or other property and to enter into contracts, leases, or other transactions with any ***federal agency, the state, any agency of the state***, or any other public body of the state." (e.s.) F.S. 163.568(2)(h). Note the parties with whom HART may deal in this regard include any federal agency, the state of Florida, any agency of the state or any other public body of the state. That fact along with the power to enter into "contracts of every name and nature" with "governmental agencies, private companies and individuals" suggests a quite broad grant of powers and authority to contract with third parties that might be able to assist in obtaining governmental grants or loans.

HART is also authorized "to develop transportation plans, and to ***coordinate*** its planning and programs ***with*** those of appropriate ***municipal, county, and state agencies and other political subdivisions of the state.***" F.S. 163.568(2)(i). Hiring third parties pursuant to its broad contracting authorization to carry out a specifically identified purpose of the organization with regard to state agencies and other political subdivisions of the state would seem to be both an express or direct grant of such powers and an implied or apparent ability to follow up on same.

Finally, HART is also by statute authorized "to do *all acts and things necessary or convenient* for the *conduct of its business* and the general welfare of the authority in order to carry out the

16 The Civil Service Board was limited to contracting for legal counsel and auditing services.

powers granted to it by this part or any other law." F.S. 163.568(2)(j). Since the "conduct of its business," according to the express provisions of the statute includes HART's efforts to obtain gifts, grants, loans or other transactions with the state, any agency of the state or any other public body of the state all acts and things necessary or convenient for accomplishing that purpose would seem to include entering into a "contract with a government relations business entity that will represent [HART's] interests . . . in the state of Florida legislative process." Based on the provisions of the enabling legislation, it seems that entering into a contract for lobbying services by HART is contemplated in the legislation authorizing its creation and in fact is part and parcel of the specific responsibilities and powers granted. To cite just one example, HART has the ability to accept grants or loans from the federal government, the state or any agency of the state or any other public body of the state. Since HART can enter into contracts of "every name in nature" to execute the powers necessary for carrying on its business it would seem that a contract entered into with a lobbyist to assist in obtaining grants or loans of money or to enter into other contracts or transactions with the federal government, the state and any agency of the state or other public body is expressly contemplated by the enabling act.

Additionally, as is seen above, HART is to develop transportation plans and to coordinate with municipal, county and state agencies and other political subdivisions of the state in this effort. Again, with the authority to enter into any contracts necessary to carry out and conduct any of its business, lobbying activities would seem to be a permissible way for HART to carry out and facilitate its coordinating function with other entities of the state. Therefore, based upon AGO 2014-01 it would seem that HART has **the authority** to employ lobbyists in furtherance of its statutorily and Charter identified purposes.

Given the interaction HART has with various agencies and entities of the state, and the ability to obtain grants therefrom, it would seem important to at least review the funds received in that fashion to be sure there are no specific limitations on the provision of those funds that would not allow them to be applied to lobbying activities. That is, the source of funds that are used by HART to pay for any of the lobbying activities must not be such that the expenditure violates that grant. With the exception of specific grants used for specific purposes, it would seem the other revenue that HART receives, including that from its ad valorem assessment, is general revenue and can be used for any purposes consistent with the budget and the findings of "public purpose" attendant to the budget adoption process.

An important consideration with respect to all of the above cited case law and Attorney General Opinions is the nature of the entity at issue. Many of the opinions and cases dealt with districts created with a very specific and limited purpose to provide regulations and/or accomplish a given purpose. Draining districts for example were to create structures that drained the property and were specifically authorized to obtain funds in the very limited manners described in order to complete same. Regulatory or administrative bodies have greater discretion and create rules and regulations that must be consistent with the enabling statute, but are intended by its very nature to flush out some of the specifics and therefore there is discretion and presumption of validity

provided to administrative bodies carrying out those tasks. HART is yet a different entity from both a regulatory and limited function district. HART is an operating entity, like aviation authorities, port authorities and the like, who are provided specific sources of revenue or means of obtaining revenue, some of which is fare revenue generated from operations. HART is then obligated to manage, operate, plan and provide for transit services in a specified geographic area. Accordingly, there is significant discretion in authority granted to an entity such as that to accomplish the purpose for which they are created. Those purposes are more proprietary in nature than they are governmental, albeit under the auspices of government processes.

As indicated, HART goes through an appropriation and budgeting process that includes the designation and delineation of expenditures that are consistent with the public purposes to be achieved under the statute and charter. The expenditure of funds for lobbying of state and federal government or attendant executive branches in order to obtain the funding, grants and other revenue and to coordinate with such governmental entities to carry out its purpose seems to be specifically within the purview and responsibility of such an agency.

CONCLUSION

Based upon a reading of the statutory authorization for HART and the Charter creating it, it is my opinion that the expenditure of funds for lobbying activities pursuant to the annual budgetary process is an act within the powers and authorities of HART. Clearly, there is no specific language indicating "lobbying" is permitted, but there is plenty of authority in the cases and opinion recited above to indicate that apparent authority and authority by implication is in fact sufficient and in this case seems evident from the language creating HART.

If the Board wants to be absolutely certain, we can seek an Attorney General Opinion based upon the facts unique to HART as a last measure to obtain reaffirmation of that ability.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA

THOMAS RASK,
Plaintiff

Case No.: 13-1877CI-13

vs.

PINELLAS SUNCOAST TRANSIT AUTHORITY,
Defendant

DEFENDANT'S MOTION TO DISMISS

The Defendant, PINELLAS SUNCOAST TRANSIT AUTHORITY ("PSTA"), by and through its undersigned counsel, pursuant to Rule 1.420(b), Fla. R. Civ. Pro, respectfully requests this court dismiss the Complaint with prejudice, and as grounds thereof would state:

1. The Plaintiff lacks standing to challenge the expenditure of funds by PSTA.
2. The use of a Federal Transit Administration (FTA) grant for the specific purposes approved by the FTA is not an illegal expenditure of public funds, and
3. The Plaintiff, taking the facts asserted in the complaint as true, has failed to and cannot state a claim upon which relief can be granted, as a matter of law.

DEFENDANT'S MEMORANDUM IN SUPPORT OF THE MOTION TO DISMISS

I. Introduction

The Complaint should be dismissed with prejudice because the Plaintiff lacks standing to challenge the actions taken by PSTA based on the "Rickman Rule" and subsequent cases. Furthermore, PSTA is expending funds for the purposes specifically granted to them through a federal grant from the Federal Transit Administration and not for any other purpose. Finally, the Plaintiff has failed to state a cause of action as a matter of law PSTA may use public funds for the work being performed by Tucker Hall and Gray Robinson.

II. Argument

PSTA was created pursuant to a special act in 1982, Attachment #1 to the complaint, which established the governing board of directors of PSTA. The board is made up of nine elected city officials representing the municipalities served by PSTA, four members of the Board of County Commissioners, and two at large citizen members chosen by the St. Petersburg City Council and Pinellas County Commission, respectively. (Special Act, Attachment #1 to the complaint). On January 30, 2012, PSTA sent out an RFP to prepare education materials and branding to be used to educate the public on numerous transportation plans affecting PSTA. (Plaintiff's Complaint ¶ 3). After the close of the RFP, Tucker Hall Inc. was awarded the contract to complete the requested work. (Plaintiff's Complaint ¶4). This contract was paid using funds

provided through a grant from the Federal Transit Administration (FTA). (Plaintiff's Complaint ¶30). The Plaintiffs allege in the Complaint that this expenditure is illegal as public funds cannot be used to promote a position on an upcoming referendum. (Plaintiff's Complaint ¶6). However, as seen below, PSTA is not expending state public funds on the Tucker Hall contract, but rather federal grant money. (Plaintiff's Complaint ¶30). Additionally, there is no restriction under Florida Law which would prohibit PSTA from making this expenditure.

a. The Plaintiff lacks standing to bring a claim.

It is well established law in Florida that a taxpayer must show a special injury distinct from what the community as a whole has suffered, absent a constitutional challenge, in order to have standing to enjoin the government from spending public funds. *Rickman v. Whitehurst,* 74 So. 205, 207 (Fla. 1917). The Florida Supreme Court has ruled that "an illegal public action which raises taxpayers' obligations or wastes public money [does] not constitute a 'special injury'." *School Board of Volusia County v. Clayton,* 691 So.2d 1066, 1067 (Fla. 1997); quoting *North Broward Hospital District v. Fornes,* 476 So.2d 154 (Fla. 1985). Thus, a taxpayer must allege and prove either a "special injury" or present a constitutional challenge in order to have standing to sue a government challenging the manner in which the government has chosen to expend funds.

In the present case, the Plaintiff fails to allege either a special injury or raise a constitutional challenge to the actions taken by PSTA. The only injuries the Plaintiff

alleges as a result of PSTA's expenditure of funds challenged in the Complaint are injuries resulting from public funds being illegally expended by PSTA and an alleged "tainting of the electorate" as a result of advertising for PSTA. (Plaintiff's Complaint ¶ 34 and 36) These allegations do not allege a special injury distinct from the remainder of the community, as required by *Rickman,* and its progeny. Furthermore, the Plaintiff does not allege a constitutional challenge against the taxing or spending powers of PSTA. Rather the basis of the Complaint is that PSTA's special act limits the activities of PSTA and does not authorize the expenditures under the Tucker Hall and Gray Robinson contracts. Accordingly, the Plaintiff has not and can not plead a special injury and therefore lacks standing to bring this claim against PSTA. The Complaint should be dismissed with prejudice.

b. The use of a Federal Transit Administration Grant for the specific purposes approved by the FTA is not an illegal expenditure of public funds.

The funds being used by PSTA to pay Tucker Hall for the "Educational Messaging and Branding" project come from a federally approved grant by the Federal Transit Administration. The funds used on the project were not derived from the ad-valorem taxes collected by PSTA from citizens within its taxing district, including the Plaintiff. (Plaintiff's Complaint ¶30).

c. The Plaintiff failed to state a cause of action for which relief can be granted.

The special act that created PSTA gives it the "right and power to purchase, own, and/or operate transit facilities, to contract for transit services...to conduct studies and to contract with...private entities." Section 4(1), Chapter 00-424, Laws of Florida, as amended, Attachment 1 to the Complaint (hereinafter, the "Special Act"). It further grants PSTA the authority to exercise "all powers necessary, appurtenant, convenient, or incidental to the carrying out of the aforesaid purposes." Special Act, Section 4(2). It then specifically enumerates powers that are included in the broad grant of power in Section 4(2), without intending to limit PSTA's powers to those listed. Included in those specific powers are the powers "to make contracts of every name and nature and to execute all instruments necessary or convenient for the carrying on of its business" and "to do all acts and things necessary or convenient for the conduct of its business and the general welfare of the authority in order to carry out the powers granted to it by" the special act or by law. Special Act, Sections 4(2)(f) and (i). (Emphasis added).

Thus, the Special Act grants PSTA broad powers to conduct its business to further the purpose of PSTA, which is to operate transit facilities. This specifically includes the authority to enter into contracts with consultants, to perform studies, to contract with private entities, and to do all acts necessary for the general welfare of the authority. The legislative policy determinations by the PSTA Board of Directors to retain the services of Tucker Hall and Gray Robinson are certainly within these powers and were determined by the PSTA Board to be necessary for its general welfare. See

Para. 26 of the Complaint. It is neither for the Plaintiff nor this Court to substitute their policy determination for that of the PSTA Board of what is necessary for the general welfare of the authority.

In addition to the broad grant of authority given to the PSTA Board of Directors in the Special Act, which is sufficient itself to authorize the actions challenged by the Plaintiff, the Special Act expressly provides PSTA with the authority to contract for services of consultants for any purpose of the authority, including studies concerning the acquisition, extension, and financing of transit systems in the area. (Special Act Section 3(5) emphasis added). PSTA, consistent with this express grant of authority, has contracted with Tucker Hall to study existing transportation plans and develop a concise public presentation, including an explanation of the costs, benefits and financing strategies and develop strategies to lead to a successful 2013 referendum that would finance PSTA's operations. See Attachment 2 to the Complaint. Accordingly, the Plaintiff's Complaint fails to state a cause of action as a matter of law and should be dismissed with prejudice.

Furthermore, the Special Act gives PSTA the express power "[w]ithout limitation, to borrow money and accept gifts or grants or loans of money or other property and to enter into contracts, leases or other transactions with any federal agency..." See Section 4(2)(h), "Special Act – Pinellas Suncoast Transit Authority" attached hereto as Exhibit 3 to the Complaint. Here, the work being performed by

Tucker Hall is being performed and funded pursuant to a grant agreement with the FTA. See para. 30 of the Complaint. In entering a grant agreement with the FTA, PSTA properly exercised its expressly granted power to accept grants and to enter into contract or other transactions with any federal agency.

Florida Statutes do not prohibit PSTA from expending funds for the work performed by Tucker Hall. Section 106.113, Florida Statutes prohibits local government from expending public funds only for a political advertisement or on electioneering communications. Section 106.011(18) defines "electioneering communications" as communications advocating for or against a particular candidate. The expenditures by PSTA are not advocating for or against a particular candidate, but rather concern an issue referendum pertaining to the financing of PSTA. Further, the work of Tucker Hall does not involve any political advertisements falling within the statutory prohibition. Thus, this expenditure is not prohibited by statute.

The United States District Court for the Northern District of Florida determined that speech relating to ballot issues enjoys more protection than speech relating to a particular candidate. *Broward Coalition of Condominiums v. Browning*, 2009 WL 1257972, Case No. 4:08cv445-SPM/WCS (N.D. Fla. May 22, 2009). In *Browning*, the court ruled that the then existing statutory definition of "electioneering communications", which included ballot issues and referenda, was too broad, and that the statutes defining and applying this definition to referenda were unconstitutional on their face. *Id.*

Chapter 106, Fla. Stats. was amended after *Broward*. Chapter 106 now permits the expenditure of public funds on referenda campaigns except where the expenditure is for a political advertisement, as defined in Section 106.113. The work being performed by Tucker Hall under its agreement with PSTA does not constitute a political advertisement under Section 106.113.

The Florida Supreme Court has held that a rule prohibiting local governmental agencies or officials from using their position in government to express an opinion about the best interests of the community would "render government feckless." *People Against Tax Revenue Mismanagement v. County of Leon*, 583 So.2d 1373, 1375 (Fla. 1991). The court further went on to hold that

> "local governments are not bound to keep silent in the face of a controversial vote that will have profound consequences for the community. Leaders have both a duty and a right to say which course of action they think best, and to make fair use of their offices for this purpose. The people elect governmental leaders precisely for this purpose." *Id.*

As expressed in the RFP, Attachment #2 to the complaint, the issues faced not only by PSTA, but by the Tampa Bay community as a whole are critical issues facing Pinellas County and the region. Thus, PSTA is not bound to keep silent in the face of the need to educate the community about the transit plans and studies ahead of the

planned referendum that will have "profound consequences" for the community. *Id.* The actions taken by PSTA to educate the community are both the "right and duty" of the PSTA Board of Directors in order to communicate to the public what these elected officials believe is the best course of action for the community.

In support of his claim, the Plaintiff relies almost exclusively on opinions of the Florida Attorney General. These opinions are not specific to PSTA, do not interpret PSTA's enabling legislation, and do not address the law set forth above. Moreover, while these opinions may give some guidance as to the state of Florida law, they are not binding on the courts, and are not themselves law. The Attorney General issues these opinions with the caveat that they are advisory in nature and should not be used in place of the advice of legal counsel, or the law itself. Here, the laws applicable to PSTA authorize the expenditures challenged by the Plaintiff, and those laws are not the subject of any of the Attorney General opinions cited by the Plaintiff.

PSTA is authorized to expend funds to educate the community and for lobbying. Therefore, the Plaintiff's Complaint fails to state a cause of action as a matter of law and should be dismissed with prejudice.

III. Conclusion

PSTA respectfully moves this court to dismiss with prejudice the claims set forth by the Plaintiff's COMPLAINT AND MOTION FOR PRELIMINARY INJUNCTION on the basis that the Plaintiff lacks standing to challenge the actions taken by PSTA, and further that no cause of action has been or could be alleged in the Complaint which would allow for relief to be granted to the Plaintiff, as a matter of law.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. Mail to Thomas Rask, *pro se*, 13565 Heritage Drive, Seminole, Florida 33776 on this 13th day of March, 2013.

ALAN S. ZIMMET, B.C.S.