

RESOLUTION NO. R-14-17

A RESOLUTION OF THE CITY OF SEBASTIAN, INDIAN RIVER COUNTY, FLORIDA, SUPPORTING SENATOR THAD ALTMAN'S REQUEST FOR A FLORIDA ATTORNEY GENERAL OPINION CONCERNING CERTAIN PROVISIONS OF THE LEASE AGREEMENT BETWEEN THE ORLANDO-ORANGE COUNTY EXPRESSWAY AUTHORITY (NOW KNOWN AS THE CENTRAL FLORIDA EXPRESSWAY AUTHORITY) (the 'Authority') AND ALL ABOARD FLORIDA – OPERATIONS LLC ("AAF").

**WHEREAS**, Florida Senator Thad Altman has petitioned Florida Attorney General Pam Bondi to issue an opinion as to whether certain language of the lease agreement between the Orlando-Orange County Expressway Authority (now known as Central Florida Expressway Authority) and All Aboard Florida – Operations LLC imposes a special "tax" on residents of Brevard and Indian River County (see attached); and

**WHEREAS**, the lease agreement also imposes an extraordinary review and determination prior to construction of any stops or depots between Orlando International Airport (OIA) and West Palm Beach for the protection of the System Pledged Revenues for the Authority's Amended and Restated Master Bond.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF SEBASTIAN, INDIAN RIVER COUNTY**, as follows:

**SECTION 1.** City Council supports Senator Altman's request for an Attorney General Opinion, and agrees that provisions in the lease agreement between the Authority and AAF which impose additional rent in the event of additional stations for lost revenue by the Authority and extraordinary review and determination prior to construction of any stops or depots between OIA and West Palm Beach are disincentive to include Brevard and Indian River County stations in any future expansion of the high speed rail.

**SECTION 2. CONFLICT.** All resolutions or parts of resolutions in conflict herewith are hereby repealed.

**SECTION 3. EFFECTIVE DATE.** This Resolution shall take effect upon its adoption.

The foregoing Resolution was passed for adoption by Council Member Hill, was seconded by Council Member Gillmor, and upon, being put to a vote, the vote was as follows:

Mayor Bob McPartlan	<u>aye</u>
Vice Mayor Jim Hill	<u>aye</u>
Council Member Jerome Adams	<u>aye</u>
Council Member Andrea Coy	<u>aye</u>
Council Member Richard Gillmor	<u>aye</u>

The Mayor thereupon declared this Resolution duly passed and adopted this 27th day of August, 2014.

CITY OF SEBASTIAN, FLORIDA

By: Bob McPartlan  
Bob McPartlan, Mayor

ATTEST: Sally A. Maio  
Sally A. Maio, MMC - City Clerk

Approved as to Form and Content for  
Reliance by the City of Sebastian Only:  
Robert A. Ginsburg  
Robert A. Ginsburg, City Attorney



## THE FLORIDA SENATE

Tallahassee, Florida 32399-1100

**COMMITTEES:**  
Military Affairs, Space, and Domestic Security, *Chair*  
Appropriations Subcommittee on Criminal and  
Civil Justice  
Appropriations Subcommittee on Finance and Tax  
Children, Families, and Elder Affairs  
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Environmental Preservation and Conservation

**JOINT COMMITTEE:**  
Joint Committee on Public Counsel Oversight

**SENATOR THAD ALTMAN**  
16th District

July 29, 2014

The Honorable Pam Bondi  
Attorney General  
Department of Legal Affairs  
The Capitol PL01  
Tallahassee, Florida 32399-1050

Subject: Request for an Attorney General Opinion (AGO) in regard to a lease stipulation between the Orlando-Orange County Expressway Authority "the Authority" and All Aboard Florida (AAF) and the use of an extraterritorial tax.

Dear Attorney General Bondi:

I respectfully request that you issue an AGO in regard to the Orlando-Orange County Expressway Authority exceeding its statutory authority in regard to a lease for right-of-way for an intercity passenger rail service between Orlando and Miami known as All Aboard Florida. The specific issue is a condition of the lease that was signed June 28, 2013.

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"7. RENT. [TO BE DETERMINED AND SUBJECT TO THE FINAL APPROVAL BY THE AUTHORITY'S BOARD. THE RENT WILL REPRESENT ALL COMPENSATION TO THE AUTHORITY FOR: THE REDUCTION IN REVENUES TO THE SYSTEM, IF ANY, AS DETERMINED BY THE AUTHORITY'S TRAFFIC AND EARNINGS CONSULTANT; FOR AAF'S USE AND RIGHTS AS TO THE PROPERTY; AND FOR ALL OTHER ISSUES AND CONDITIONS TAKEN INTO CONSIDERATION RELATIVE TO THE LEASE AGREEMENT. SUCH RENT TO BE PAID IN ANNUAL INSTALLMENTS OR PERIODIC LUMP-SUM PAYMENTS OR A COMBINATION THEREOF]"

While this section seems appropriate to hold the Authority harmless for any impacts of the AAF system it has a direct impact for two communities, the Space and Treasure Coasts. The practical application of this requirement is if train stations are located in Brevard and Indian River

**REPLY TO:**

- 6767 North Wickham Road, Suite 211, Melbourne, Florida 32940 (321) 752-3138
- 314 Senate Office Building, 404 South Monroe Street, Tallahassee, Florida 32399-1100 (850) 487-5016

Senate's Website: [www.flsenate.gov](http://www.flsenate.gov)

**DON GAETZ**  
President of the Senate

**GARRETT RICHTER**  
President Pro Tempore

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Counties, the lost revenue from the tolls collected for cars traveling to Orlando will be added to the base rent. That is an extraterritorial tax imposed by the Authority to AAF. That illegal tax directly impacts the viability of stations in those two counties.

This requirement makes the viability of stations to be located in either county unlikely. While the Authority does have a responsibility to keep revenues stable for the bond holders, the Authority cannot impose a "toll" outside of its territorial boundaries. The Authority has remedies other than to impose an extraterritorial toll. The Authority could deny the lease or raise tolls within the existing system. Both remedies are allowable but each has negative impacts. It appears to be to be a hidden tax. By imposing this extraterritorial tax the Authority achieves all of the benefits for itself and AAF and punishes the citizens of Brevard and Indian River Counties. Those impacted citizens also have no representation on the Authority's board of directors.

**As you know there are numerous AGOs and court decisions that rule that municipalities, authorities and special districts may not levy taxes, special assessment or liens beyond their territorial limits. That standard should still apply in this instance even if it is done by contract. An authority and private company cannot impose a tax/toll by contractual consent.**

I thank you for your consideration of this matter. The lease agreement is attached. If you have any questions please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Thad Altman". The signature is written in a cursive, slightly slanted style.

Thad Altman

Attachment