

RESOLUTION NO. 2014- 074

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, SUPPORTING FLORIDA STATE 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) AND ALL ABOARD FLORIDA – OPERATIONS, LLC.

WHEREAS, All Aboard Florida – Operations, LLC (“All Aboard Florida”) is proposing to provide passenger rail service between Miami and Orlando that will run through populated areas of Indian River County, including Vero Beach, Sebastian, and the communities of Gifford, Roseland, Wabasso and Winter Beach; and

WHEREAS, All Aboard Florida has no proposed stops between West Palm Beach and the Orlando International Airport; and

WHEREAS, All Aboard Florida has entered into a lease agreement with the Orlando-Orange County Expressway Authority, now known as the Central Florida Expressway Authority, (the “Authority”) in which All Aboard Florida has agreed that any additional stops would require, among other things, an increase in rental payment to the Authority and an opinion from the Authority’s bond counsel that the additional stops will not jeopardize the Authority’s bonds; and

WHEREAS, the Authority is controlled by a nine member board consisting of the Mayor of Orange County, the Mayor of Orlando, an Orange County commissioner appointed by the Mayor of Orange County, an Osceola County commissioner appointed by the chair of the Osceola County Commission, a Seminole County commissioner appointed by the chair of the Seminole County Commission, a Lake County commissioner appointed by the chair of the Lake County Commission, and three members appointed by the Governor; and

WHEREAS, the Indian River County Board of County Commissioners is extremely concerned that the Authority, run by elected officials from central Florida and unelected individuals appointed by the Governor, will dictate how passenger rail service is proposed to be provided in Indian River County and the Treasure Coast; and

WHEREAS, Florida State Senator Thad Altman has requested Florida Attorney General Pam Bondi to issue an opinion as to whether certain language concerning the addition of new stops in the lease agreement between the Authority and All Aboard Florida imposes an illegal special tax on the residents of Brevard County and Indian River County; and

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WHEREAS, the Indian River County Board of County Commissioners is supportive of the request made by Florida State Senator Thad Altman to Florida Attorney General Pam Bondi; and

WHEREAS, the Indian River County Board of County Commissioners is opposed to any efforts by the State of Florida, including any other agencies and entities of the State of Florida, to dictate and impose a passenger rail system on the citizens of Indian River County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF INDIAN RIVER COUNTY, FLORIDA, THAT:

Section 1. The above "WHEREAS" clauses are true and correct, and are hereby adopted as findings of the Board.

Section 2. The Board of County Commissioners of Indian River County supports Florida State Senator Thad Altman's request for an Attorney General Opinion concerning the provisions of the lease agreement between the Authority and All Aboard Florida concerning the addition of new stops in the lease agreement between the Authority and All Aboard Florida imposes a special tax on the residents of Brevard County and Indian River County.

Section 3. The Board of County Commissioners of Indian River County opposes any attempts by the State of Florida and its governmental agencies and entities to dictate and impose a passenger rail system on the citizens of Indian River County.

Section 4. A certified copy of this resolution shall be provided to the Governor Rick Scott, Florida Attorney General Pam Bondi, Florida State Senators Thad Altman and Joe Negron, and Florida State Representative Debbie Mayfield.

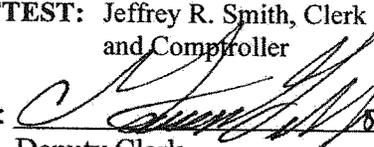
The foregoing resolution was moved for adoption by Commissioner Solari, and seconded by Commissioner Flescher, and, upon being put to a vote, the vote was as follows:

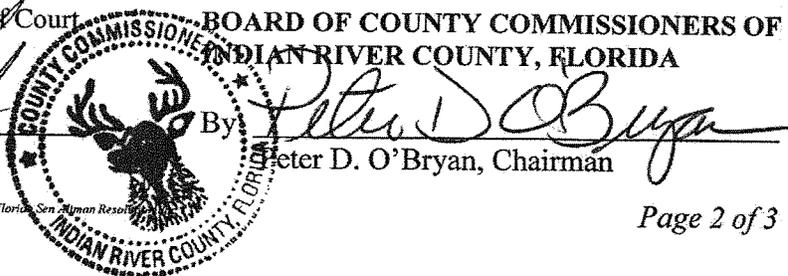
Chairman Peter D. O'Bryan	<u>Aye</u>
Vice Chairman Wesley S. Davis	<u>Aye</u>
Commissioner Joseph E. Flescher	<u>Aye</u>
Commissioner Bob Solari	<u>Aye</u>
Commissioner Tim Zorc	<u>Aye</u>

The Chairman thereupon declared the resolution duly passed and adopted this 16 day of September, 2014.

ATTEST: Jeffrey R. Smith, Clerk of Court

and Comptroller

By: 
Deputy Clerk



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BCC approval date: September , 2014

Approved as to form and legal sufficiency:

By: 

Dylan Reingold, County 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
Criminal Justice
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.

Page 11:

"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

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

Page 2

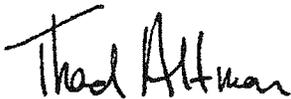
Counties, the lost revenue from the tolls collected for cars traveling to Orlando will be added to the base rent. That is an extraterritorial tax imposed by the Authority to AAF. That illegal tax directly impacts the viability of stations in those two counties.

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