



THE FLORIDA SENATE

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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

RECEIVED
SEP 22 2014
TREASURE COAST
REGIONAL PLANNING COUNCIL

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
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Senate's Website: www.flsenate.gov

DON GAETZ
President of the Senate

GARRETT RICHTER
President Pro Tempore

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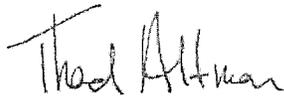
Counties, the lost revenue from the tolls collected for cars traveling to Orlando will be added to the base rent. That is an extraterritorial tax imposed by the Authority to AAF. That illegal tax directly impacts the viability of stations in those two counties.

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 style with a large initial "T".

Thad Altman

Attachment