

South
Florida
Regional
Planning
Council



MEMORANDUM

AGENDA ITEM #VI.A

DATE: JANUARY 9, 2012
TO: COUNCIL MEMBERS
FROM: STAFF
SUBJECT: CORRESPONDENCE AND ATTENDANCE FORM

Information only.

ATTENDANCE RECORD - 2011

	1/3	2/7	3/7	4/4	5/2	6/6	7/11	9/12	10/3	11/7	12/5	
ASSEFF, Patricia Governor's Appointee	P	P	*	P	P	P	P	P	P	*	P	
BATES, Margaret Vice Mayor, Lauderhill	A	A	P	P	*	A	*	P	*	P	A	
BLYNN, Michael Councilman, North Miami	P	P	P	P	P	P	*	P	P	P	A	
BOVO, JR., Esteban Miami-Dade Co. Commission	-	-	-	-	-	-	P	P	*	P	*	
CARRUTHERS, Heather Monroe County Commission	P	P	CC	P	P	P	P	CC	P	P	P	
GUNZBURGER, Suzanne Broward County Commission	P	P	P	P	*	P	*	P	P	P	CC	
LIEBERMAN, Ilene Broward County Commission	*	*	P	P	*	P	*	P	P	P	P	
MARONO, Manuel Mayor, City of Sweetwater	-	-	P	P	A	A	P	A	A	P	A	
MONESTIME, Jean Miami-Dade Co. Commission	-	-	P	*	*	A	P	P	*	P	*	
NEUGENT, George Monroe County Commission	A	*	*	P	P	*	*	CC	A	P	*	
RIESCO, Jose Governor's Appointee	P	*	P	CC	P	CC	P	CC	P	P	P	
RITTER, Stacy Mayor, Broward County	P	P	*	P	*	P	*	P	*	P	CC	
SCUOTTO, Joseph Deputy Mayor, Sunrise	*	CC	*	A	P	P	CC	CC	P	*	CC	
SOSA, Rebeca Miami-Dade Co. Commission	*	P	*	*	P	*	P	P	P	P	*	
WALLACE, Paul Governor's Appointee	P	P	P	P	P	P	P	P	P	P	P	
WALTERS, Sandra Governor's Appointee	P	P	CC	P	P	P	P	P	P	P	P	
WEEKLEY, Jimmy Commissioner, Key West	P	P	P	P	P	P	*	P	*	P	P	

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Ex Officio Members –												
BOUCLE, Aileen Florida Dept. of Transportation	-	-	-	-	-	-	-	P	P	P	P	
CLARIDGE, Kevin Dept. of Environmental Protection	D	P	*	P	*	P	D	P	*	P	CC	
MORRIS, Carole South Florida Water Management District	-	-	-	-	-	-	-	P	P	P	P	
TAYLOR, Norman Broward County Office of Economic Development	P	P	P	A	P	P	*	P	P	P	A	

P = Present

A = Absent

D = Designee Present

* = Excused Absence

- = Not Yet Appointed

CC = Via Conference Call

** Please note – July & August Meetings Executive Committee Only

Rick Scott
GOVERNOR



Doug Darling
EXECUTIVE DIRECTOR

December 8, 2011

James Murley
Interim Executive Director
South Florida Regional Planning Council
3440 Hollywood Blvd, Ste 140
Hollywood, FL 33021



Dear James,

Thank you for your time and effort on 29 November 2011 at the first statewide stakeholders' meeting to create Florida's 5-year economic development strategic plan. The session at Collaborative Labs was a great success. Together, we made strides toward developing recommendations for 2017 vision and goals for Florida's economy, and prioritizing possible economic development strategies.

While considerable progress was made, there remains much work to do. The next phase of this strategic planning effort will involve regional engagement meetings from January through March 2012 to gather additional input from the public, local communities, and regional entities. The Department of Economic Opportunity will take the lead in organizing these meetings.

I applaud all you have accomplished so far. Your continued support is critical to the success of this plan. Please encourage your colleagues to get involved in this important effort by visiting www.floridajobs.org.

Sincerest thanks,

Doug Darling
Executive Director

cc: Gray Swoope, Secretary of Commerce
and President, Enterprise Florida, Inc.

Division of Strategic Business Development

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STEVEN L. JOSIAS, OF COUNSEL

PLEASE REPLY TO FORT LAUDERDALE

December 13, 2011

SFRPC
DEC 14 2011

VIA REGULAR MAIL AND EMAIL

Suzanne Gunzburger, Chair
South Florida Regional Planning Council
3440 Hollywood Boulevard, Suite 140
Hollywood, FL 33021

RE: South Florida Regional Planning Council ("SFRPC") / Attorney General Opinion 2011-26

Madame Chair and Members of the Council:

On December 9, 2011, the Attorney General's Office issued Attorney General Opinion 2011-26 ("the AGO"), in response to the October 17, 2011 request submitted by the General Counsel's Office at the direction of the SFRPC. A copy of the AGO is attached for your review.

As you know, the General Counsel's Office asked the Attorney General to clarify whether the SFRPC was a "unit of government" for purposes of Section 215.425, F.S. This provision, which was recently amended, expressly limits severance and bonus payments for individuals employed by units of government. You may recall that we sought clarification from the Attorney General's Office in the context of negotiating the executive director employment agreement with James F. Murley.

Please be advised that the Attorney General's Office has determined that **the SFRPC is a unit of government** for purposes of Section 215.425, F.S. Therefore, the SFRPC **may not** enter into an employment agreement (or renew or renegotiate an existing agreement) which contains a severance provision that provides for more than twenty (20) weeks of severance compensation. Please note that Mr. Murley's employment agreement provides for three (3) months of severance

payment compensation in the event of termination and, therefore, **does not** conflict with Section 215.425, F.S.

Thank you for your consideration. Please contact our office if there is any additional information that we can provide.

Sincerely,

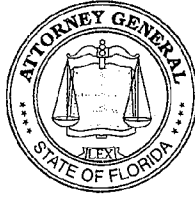
A handwritten signature in black ink, appearing to read 'Sam', written over a large 'X' mark.

SAMUEL S. GOREN
General Counsel

SSG/JGH

CC: James F. Murley, Executive Director

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STATE OF FLORIDA

**PAM BONDI
ATTORNEY GENERAL**

December 9, 2011

11-26

Mr. Samuel S. Goren
Mr. Jacob G. Horowitz
Attorneys for the South Florida
Regional Planning Council
3099 East Commercial Boulevard
Fort Lauderdale, Florida 33308

Dear Messrs. Goren and Horowitz:

On behalf of the South Florida Regional Planning Council, you have asked for my opinion on substantially the following question:

Is the South Florida Regional Planning Council considered a "unit of government" as that phrase is used in section 215.425, Florida Statutes, as amended by Chapter 2011-143, Laws of Florida, for the purpose of determining severance payments for its employees?

In sum:

The South Florida Regional Planning Council is a "unit of government" for purposes of section 215.425, Florida Statutes, as amended by Chapter 2011-143, Laws of Florida, for determining severance payments for its employees.

You advise that the South Florida Regional Planning Council is currently negotiating an employment agreement with a prospective executive director and is seeking guidance regarding whether the regional planning council is subject to section 215.425(4)(a), Florida Statutes.

The South Florida Regional Planning Council was created pursuant to the "Florida Regional Planning Council Act," sections 186.501 - 186.513, Florida Statutes. The act authorizes the creation of regional planning councils in each of the several comprehensive planning districts of the state in order to effectively carry out a wide variety of federal and state program designations and to avoid a proliferation of

Mr. Samuel S. Goren
Mr. Jacob G. Horowitz
Page Two

overlapping, duplicating, and competing agencies.¹ The comprehensive planning districts are geographic areas within the state designated by the Executive Office of the Governor.²

The purpose of the act is

to establish a common system of regional planning councils for areawide coordination and related cooperative activities of federal, state, and local governments; ensure a broad-based regional organization that can provide a truly regional perspective; and enhance the ability and opportunity of local governments to resolve issues and problems transcending their individual boundaries.³

As provided in the act, regional planning councils serve as the primary organizations to address problems and plan solutions that are of concern on more than a local level and it is through the regional planning councils that local governments may provide input into state policy development.⁴ While the councils do not act as a permitting or regulatory entity, they are recognized as the multipurpose regional entity that is in a position to plan for and coordinate intergovernmental solutions to growth-related problems on greater-than-local issues, provide technical assistance to local governments, and meet other needs of the communities in each region.⁵

In order to accomplish these legislatively prescribed goals, regional planning councils have been given a number of specifically enumerated powers, including the power to enter into contracts and agreements; to sue and be sued in their own names; to accept funds, grants, and services from governmental or private sources; to adopt rules; and to participate with other organizations, public and private, in the coordination or conduct of their activities.⁶ Regional planning councils are authorized by section 186.505, Florida Statutes, to employ and compensate personnel, consultants, and technical and professional assistants as are determined to be necessary to perform the duties set forth in the act.⁷ Such councils constitute "agencies" for purposes of

¹ See s. 186.502(1)(c), Fla. Stat.

² See s. 186.503(1), Fla. Stat.

³ Section 186.502(2), Fla. Stat.

⁴ Section 186.502(3), Fla. Stat.

⁵ See s. 186.502(4), Fla. Stat.

⁶ See s. 186.505, Fla. Stat.

⁷ Section 186.505(4), Fla. Stat.

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Chapter 120, Florida Statutes, the "Administrative Procedures Act."⁸

Regional planning councils must prepare and submit to the Executive Office of the Governor a proposed comprehensive regional policy plan, addressing significant regional resources, infrastructure needs, or other important issues within the region as well as specifying regional issues that may be used in reviewing a development of regional impact.⁹ This regional policy plan contains regional goals and policies regarding growth management and must be consistent with the adopted state comprehensive plan.¹⁰ The Executive Office of the Governor arbitrates disputes between or among the regional planning councils.¹¹

While Florida courts have not addressed the issue of regional planning councils as "units of government," they have considered the nature of regional planning councils and determined that board members are officers for purpose of Florida's Resign-to-Run Law and the constitutional dual office-holding prohibition. In *Orange County v. Gillespie*,¹² the court considered a regional planning council established under former Chapter 160, Florida Statutes.¹³ The court considered whether a voting member of the East Central Florida Regional Planning Council was a "public officer" within the meaning of Florida's Resign-to-Run Law, which required elected or appointed public officials to resign from office before seeking another public office. While it was argued that the council acted in an advisory capacity, the court held that the regional planning councils had been delegated and possessed the powers and attributes of sovereignty.

Thus, the court held that members of such councils constituted public officers for purposes of the resign-to-run law at that time applicable to state, county, or municipal offices.¹⁴ The court concluded that the member was ineligible to qualify as a candidate for the office of state representative in the primary prior to resigning from the planning council. Likewise, this office has, for purposes of dual office-holding considerations,

⁸ See s. 120.52(1), Fla. Stat., defining "Agency" for purposes of Ch. 120, Fla. Stat., the Administrative Procedure Act, to mean, among others, those entities described in s. 186.504, Fla. Stat.

⁹ Section 186.508(1), Fla. Stat.

¹⁰ Section 186.507(1), Fla. Stat.

¹¹ See s. 186.506(1), Fla. Stat.

¹² 239 So. 2d 132 (Fla. 4th DCA 1970), *cert. denied*, 239 So. 2d 825 (Fla. 1970).

¹³ See now ss. 186.501-186.513, Fla. Stat.

¹⁴ See s. 99.012, Fla. Stat. (1971), stating in subsection (2) that "[n]o individual may qualify as a candidate for public office who holds another elective or appointive office, whether state, county, or municipal, the term of which or any part thereof runs concurrently with the term of office for which he seeks to qualify without resigning from such office" Section 99.012(2) was subsequently amended and now refers to district offices in addition to federal, state, county, and municipal offices; however, at the time the court reached its opinion in *Orange County v. Gillespie*, *supra*, the statute did not refer to district offices.

determined that membership on a regional planning council constitutes an office within the meaning of Article II, section 5(a), Florida Constitution, Florida's dual office-holding prohibition.¹⁵

Section 215.425, Florida Statutes, prohibits extra compensation payments in the absence of a policy or contract. Subsection (1) of the statute, as amended by section 1, Chapter 2011-143, Laws of Florida, provides that:

No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made; nor shall any money be appropriated or paid on any claim the subject matter of which has not been provided for by preexisting laws, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature. However, when adopting salary schedules for a fiscal year, a district school board or community college district board of trustees may apply the schedule for payment of all services rendered subsequent to July 1 of that fiscal year.

The statute was amended during the 2011 legislative session to authorize certain limited types of extra compensation¹⁶ and to require that any policy, ordinance, rule or resolution crafted to implement a bonus scheme meet certain legislatively prescribed standards:

- (3) Any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:
 - (a) Base the award of a bonus on work performance;
 - (b) Describe the performance standards and evaluation process by which a bonus will be awarded;
 - (c) Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based;
 - and
 - (d) Consider all employees for the bonus.¹⁷

¹⁵ See Op. Att'y Gen. Fla. 01-28 (2001).

¹⁶ See s. 1(2), Ch. 2011-143, Laws of Fla.

This section does not apply to:

- (a) A bonus or severance pay that is paid wholly from nontax revenues and nonstate-appropriated funds, the payment and receipt of which does not otherwise violate part III of chapter 112, and which is paid to an officer, agent, employee, or contractor of a public hospital that is operated by a county or a special district; or
- (b) A clothing and maintenance allowance given to plainclothes deputies pursuant to s. 30.49.

¹⁷ Section 215.425(3), Fla. Stat.

Mr. Samuel S. Goren
Mr. Jacob G. Horowitz
Page Five

You specifically inquire about subsection (4) which requires in subparagraph (a), that after July 1, 2011:

a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor must include the following provisions in the contract:

1. A requirement that severance pay provided may not exceed an amount greater than 20 weeks of compensation.
2. A prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036(29), by the unit of government.¹⁸

The phrase "unit of government" as it is used in section 215.425, Florida Statutes, is not defined. In the absence of a statutory definition, the plain and ordinary meaning of a word can be ascertained, if necessary by reference to a dictionary.¹⁹ The word "government" is commonly defined as "the political direction and control exercised over the actions of the members, citizens, or inhabitants of communities, societies, and states; direction of the affairs of a state, community, etc.; political administration[;]"²⁰ or "[a] system by which a political unit is governed[;] [a] governing body or organization."²¹ A "unit" is defined as "one of a number of things, organizations, etc., identical or equivalent in function or form[;]" and "[o]ne regarded as a constituent part of a whole" or "[a] part, device, or module that performs a particular function."²² Thus, a "unit of government" would appear to be a governing body or organization that constitutes a part of the political administration of this state.

Regional planning councils are the primary organizations in this state addressing intergovernmental planning problems and providing solutions and technical assistance. These planning councils act on behalf of the state in implementing state policies

¹⁸ Further, any agreement or contract, executed on or after July 1, 2011, which involves extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract pursuant to section 215.425(5), Fla. Stat.

¹⁹ See *Green v. State*, 604 So. 2d 471, 473 (Fla. 1992); *Plante v. Department of Business and Professional Regulation*, 685 So. 2d 886, 887 (Fla. 4th DCA 1996), *WFTV, Inc. v. Wilken*, 675 So. 2d 674 (Fla. 4th DCA 1996); *State v. Cohen*, 696 So. 2d 435 (Fla. 4th DCA 1997).

²⁰ Webster's New Universal Unabridged Dictionary 2003, p. 826.

²¹ The American Heritage Dictionary (office ed. 1987), p. 303.

²² Webster's New Universal Unabridged Dictionary 2003, p. 2074; The American Heritage Dictionary (office ed. 1987), p. 741.

Mr. Samuel S. Goren
Mr. Jacob G. Horowitz
Page Six

relating to growth management. Regional planning councils are statutorily authorized and regulated entities responsible for formulating regional planning processes. Board members or planning councils are subject to the Florida's Resign-to-Run Law and the dual office-holding prohibition.²³ Thus, it would appear that regional planning councils created pursuant to the "Florida Regional Planning Council Act" are a part of the political administration of this state and would constitute "units of government" for purposes of section 215.425, Florida Statutes, as amended by Chapter 2011-143, Laws of Florida.

In sum, it is my opinion that the South Florida Regional Planning Council is a "unit of government" as that phrase is used in section 215.425, Florida Statutes, as amended by Chapter 2011-143, Laws of Florida, for the purpose of determining severance payments for its employees.

Sincerely,



Pam Bondi
Attorney General

PB/tgh

²³ See Art. II, s. 5(a), Fla. Const., providing a dual office-holding prohibition and s. 99.012, Fla. Stat., for resign-to-run requirements.

Mr. Samuel S. Goren
Mr. Jacob G. Horowitz
Page Seven

RE: REGIONAL PLANNING COUNCILS – PUBLIC EMPLOYEE
COMPENSATION – EXTRA COMPENSATION – UNITS OF
GOVERNMENT – whether regional planning council is "unit of
government" for purposes of providing severance pay for officers and
employees of council. s. 215.425, Fla. Stat., as amended by Ch. 2011-
143, Laws of Fla.

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EXECUTIVE DIRECTOR

December 8, 2011

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Interim Executive Director
South Florida Regional Planning Council
3440 Hollywood Blvd, Ste 140
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Sincerest thanks,

Doug Darling
Executive Director

cc: Gray Swoope, Secretary of Commerce
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Division of Strategic Business Development

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PLEASE REPLY TO FORT LAUDERDALE

December 13, 2011

VIA REGULAR MAIL AND EMAIL

Suzanne Gunzburger, Chair
South Florida Regional Planning Council
3440 Hollywood Boulevard, Suite 140
Hollywood, FL 33021

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SFRPC
DEC 14 2011

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Thank you for your consideration. Please contact our office if there is any additional information that we can provide.

Sincerely,



SAMUEL S. GOREN
General Counsel

SSG/JGH

CC: James F. Murley, Executive Director

H:\820098.SFRPCLETTERS 2011\Letters 2011\Ltr. to SFRPC re AGO Request.docx



STATE OF FLORIDA

**PAM BONDI
ATTORNEY GENERAL**

December 9, 2011

11-26

Mr. Samuel S. Goren
Mr. Jacob G. Horowitz
Attorneys for the South Florida
Regional Planning Council
3099 East Commercial Boulevard
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to establish a common system of regional planning councils for areawide coordination and related cooperative activities of federal, state, and local governments; ensure a broad-based regional organization that can provide a truly regional perspective; and enhance the ability and opportunity of local governments to resolve issues and problems transcending their individual boundaries.³

As provided in the act, regional planning councils serve as the primary organizations to address problems and plan solutions that are of concern on more than a local level and it is through the regional planning councils that local governments may provide input into state policy development.⁴ While the councils do not act as a permitting or regulatory entity, they are recognized as the multipurpose regional entity that is in a position to plan for and coordinate intergovernmental solutions to growth-related problems on greater-than-local issues, provide technical assistance to local governments, and meet other needs of the communities in each region.⁵

In order to accomplish these legislatively prescribed goals, regional planning councils have been given a number of specifically enumerated powers, including the power to enter into contracts and agreements; to sue and be sued in their own names; to accept funds, grants, and services from governmental or private sources; to adopt rules; and to participate with other organizations, public and private, in the coordination or conduct of their activities.⁶ Regional planning councils are authorized by section 186.505, Florida Statutes, to employ and compensate personnel, consultants, and technical and professional assistants as are determined to be necessary to perform the duties set forth in the act.⁷ Such councils constitute "agencies" for purposes of

¹ See s. 186.502(1)(c), Fla. Stat.

² See s. 186.503(1), Fla. Stat.

³ Section 186.502(2), Fla. Stat.

⁴ Section 186.502(3), Fla. Stat.

⁵ See s. 186.502(4), Fla. Stat.

⁶ See s. 186.505, Fla. Stat.

⁷ Section 186.505(4), Fla. Stat.

Mr. Samuel S. Goren
Mr. Jacob G. Horowitz
Page Three

Chapter 120, Florida Statutes, the "Administrative Procedures Act."⁸

Regional planning councils must prepare and submit to the Executive Office of the Governor a proposed comprehensive regional policy plan, addressing significant regional resources, infrastructure needs, or other important issues within the region as well as specifying regional issues that may be used in reviewing a development of regional impact.⁹ This regional policy plan contains regional goals and policies regarding growth management and must be consistent with the adopted state comprehensive plan.¹⁰ The Executive Office of the Governor arbitrates disputes between or among the regional planning councils.¹¹

While Florida courts have not addressed the issue of regional planning councils as "units of government," they have considered the nature of regional planning councils and determined that board members are officers for purpose of Florida's Resign-to-Run Law and the constitutional dual office-holding prohibition. In *Orange County v. Gillespie*,¹² the court considered a regional planning council established under former Chapter 160, Florida Statutes.¹³ The court considered whether a voting member of the East Central Florida Regional Planning Council was a "public officer" within the meaning of Florida's Resign-to-Run Law, which required elected or appointed public officials to resign from office before seeking another public office. While it was argued that the council acted in an advisory capacity, the court held that the regional planning councils had been delegated and possessed the powers and attributes of sovereignty.

Thus, the court held that members of such councils constituted public officers for purposes of the resign-to-run law at that time applicable to state, county, or municipal offices.¹⁴ The court concluded that the member was ineligible to qualify as a candidate for the office of state representative in the primary prior to resigning from the planning council. Likewise, this office has, for purposes of dual office-holding considerations,

⁸ See s. 120.52(1), Fla. Stat., defining "Agency" for purposes of Ch. 120, Fla. Stat., the Administrative Procedure Act, to mean, among others, those entities described in s. 186.504, Fla. Stat.

⁹ Section 186.508(1), Fla. Stat.

¹⁰ Section 186.507(1), Fla. Stat.

¹¹ See s. 186.506(1), Fla. Stat.

¹² 239 So. 2d 132 (Fla. 4th DCA 1970), cert. denied, 239 So. 2d 825 (Fla. 1970).

¹³ See now ss. 186.501-186.513, Fla. Stat.

¹⁴ See s. 99.012, Fla. Stat. (1971), stating in subsection (2) that "[n]o individual may qualify as a candidate for public office who holds another elective or appointive office, whether state, county, or municipal, the term of which or any part thereof runs concurrently with the term of office for which he seeks to qualify without resigning from such office . . ." Section 99.012(2) was subsequently amended and now refers to district offices in addition to federal, state, county, and municipal offices; however, at the time the court reached its opinion in *Orange County v. Gillespie*, supra, the statute did not refer to district offices.

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determined that membership on a regional planning council constitutes an office within the meaning of Article II, section 5(a), Florida Constitution, Florida's dual office-holding prohibition.¹⁵

Section 215.425, Florida Statutes, prohibits extra compensation payments in the absence of a policy or contract. Subsection (1) of the statute, as amended by section 1, Chapter 2011-143, Laws of Florida, provides that:

No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made; nor shall any money be appropriated or paid on any claim the subject matter of which has not been provided for by preexisting laws, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature. However, when adopting salary schedules for a fiscal year, a district school board or community college district board of trustees may apply the schedule for payment of all services rendered subsequent to July 1 of that fiscal year.

The statute was amended during the 2011 legislative session to authorize certain limited types of extra compensation¹⁶ and to require that any policy, ordinance, rule or resolution crafted to implement a bonus scheme meet certain legislatively prescribed standards:

- (3) Any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:
 - (a) Base the award of a bonus on work performance;
 - (b) Describe the performance standards and evaluation process by which a bonus will be awarded;
 - (c) Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based;and
- (d) Consider all employees for the bonus.¹⁷

¹⁵ See Op. Att'y Gen. Fla. 01-28 (2001).

¹⁶ See s. 1(2), Ch. 2011-143, Laws of Fla.

This section does not apply to:

- (a) A bonus or severance pay that is paid wholly from nontax revenues and nonstate-appropriated funds, the payment and receipt of which does not otherwise violate part III of chapter 112, and which is paid to an officer, agent, employee, or contractor of a public hospital that is operated by a county or a special district; or
- (b) A clothing and maintenance allowance given to plainclothes deputies pursuant to s. 30.49.

¹⁷ Section 215.425(3), Fla. Stat.

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You specifically inquire about subsection (4) which requires in subparagraph (a), that after July 1, 2011:

a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor must include the following provisions in the contract:

1. A requirement that severance pay provided may not exceed an amount greater than 20 weeks of compensation.
2. A prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036(29); by the unit of government.¹⁸

The phrase "unit of government" as it is used in section 215.425, Florida Statutes, is not defined. In the absence of a statutory definition, the plain and ordinary meaning of a word can be ascertained, if necessary by reference to a dictionary.¹⁹ The word "government" is commonly defined as "the political direction and control exercised over the actions of the members, citizens, or inhabitants of communities, societies, and states; direction of the affairs of a state, community, etc.; political administration[;]"²⁰ or "[a] system by which a political unit is governed[;] [a] governing body or organization."²¹ A "unit" is defined as "one of a number of things, organizations, etc., identical or equivalent in function or form[;]" and "[o]ne regarded as a constituent part of a whole" or "[a] part, device, or module that performs a particular function."²² Thus, a "unit of government" would appear to be a governing body or organization that constitutes a part of the political administration of this state.

Regional planning councils are the primary organizations in this state addressing intergovernmental planning problems and providing solutions and technical assistance. These planning councils act on behalf of the state in implementing state policies

¹⁸ Further, any agreement or contract, executed on or after July 1, 2011, which involves extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract pursuant to section 215.425(5), Fla. Stat.

¹⁹ See *Green v. State*, 604 So. 2d 471, 473 (Fla. 1992); *Plante v. Department of Business and Professional Regulation*, 685 So. 2d 886, 887 (Fla. 4th DCA 1996), *WFTV, Inc. v. Wilken*, 675 So. 2d 674 (Fla. 4th DCA 1996); *State v. Cohen*, 696 So. 2d 435 (Fla. 4th DCA 1997).

²⁰ Webster's New Universal Unabridged Dictionary 2003, p. 826.

²¹ The American Heritage Dictionary (office ed. 1987), p. 303.

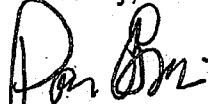
²² Webster's New Universal Unabridged Dictionary 2003, p. 2074; The American Heritage Dictionary (office ed. 1987), p. 741.

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relating to growth management. Regional planning councils are statutorily authorized and regulated entities responsible for formulating regional planning processes. Board members or planning councils are subject to the Florida's Resign-to-Run Law and the dual office-holding prohibition.²³ Thus, it would appear that regional planning councils created pursuant to the "Florida Regional Planning Council Act" are a part of the political administration of this state and would constitute "units of government" for purposes of section 215.425, Florida Statutes, as amended by Chapter 2011-143, Laws of Florida.

In sum, it is my opinion that the South Florida Regional Planning Council is a "unit of government" as that phrase is used in section 215.425, Florida Statutes, as amended by Chapter 2011-143, Laws of Florida, for the purpose of determining severance payments for its employees.

Sincerely,



Pam Bondi
Attorney General

PB/tgh

²³ See Art. II, s. 5(a), Fla. Const., providing a dual office-holding prohibition and s. 99.012, Fla. Stat., for resign-to-run requirements.

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Mr. Jacob G. Horowitz
Page Seven

RE: REGIONAL PLANNING COUNCILS – PUBLIC EMPLOYEE
COMPENSATION – EXTRA COMPENSATION – UNITS OF
GOVERNMENT – whether regional planning council is "unit of
government" for purposes of providing severance pay for officers and
employees of council. s. 215.425, Fla. Stat., as amended by Ch. 2011-
143, Laws of Fla.

South
Florida
Regional
Planning
Council



MEMORANDUM

AGENDA ITEM #VI.A

DATE: JANUARY 9, 2012
TO: COUNCIL MEMBERS
FROM: STAFF
SUBJECT: CORRESPONDENCE AND ATTENDANCE FORM

Information only.

ATTENDANCE RECORD - 2011

	1/3	2/7	3/7	4/4	5/2	6/6	7/11	9/12	10/3	11/7	12/5	
ASSEFF, Patricia Governor's Appointee	P	P	*	P	P	P	P	P	P	*	P	
BATES, Margaret Vice Mayor, Lauderdale	A	A	P	P	*	A	*	P	*	P	A	
BLYNN, Michael Councilman, North Miami	P	P	P	P	P	P	*	P	P	P	A	
BOVO, JR., Esteban Miami-Dade Co. Commission	-	-	-	-	-	-	P	P	*	P	*	
CARRUTHERS, Heather Monroe County Commission	P	P	CC	P	P	P	P	CC	P	P	P	
GUNZBURGER, Suzanne Broward County Commission	P	P	P	P	*	P	*	P	P	P	CC	
LIEBERMAN, Ilene Broward County Commission	*	*	P	P	*	P	*	P	P	P	P	
MARONO, Manuel Mayor, City of Sweetwater	-	-	P	P	A	A	P	A	A	P	A	
MONESTIME, Jean Miami-Dade Co. Commission	-	-	P	*	*	A	P	P	*	P	*	
NEUGENT, George Monroe County Commission	A	*	*	P	P	*	*	CC	A	P	*	
RIESCO, Jose Governor's Appointee	P	*	P	CC	P	CC	P	CC	P	P	P	
RITTER, Stacy Mayor, Broward County	P	P	*	P	*	P	*	P	*	P	CC	
SCUOTTO, Joseph Deputy Mayor, Sunrise	*	CC	*	A	P	P	CC	CC	P	*	CC	
SOSA, Rebeca Miami-Dade Co. Commission	*	P	*	*	P	*	P	P	P	P	*	
WALLACE, Paul Governor's Appointee	P	P	P	P	P	P	P	P	P	P	P	
WALTERS, Sandra Governor's Appointee	P	P	CC	P	P	P	P	P	P	P	P	
WEEKLEY, Jimmy Commissioner, Key West	P	P	P	P	P	P	*	P	*	P	P	

	1/3	2/7	3/7	4/4	5/2	6/6	7/11	9/12	10/3	11/7	12/5	
Ex Officio Members –												
BOUCLE, Aileen Florida Dept. of Transportation	-	-	-	-	-	-	-	P	P	P	P	
CLARIDGE, Kevin Dept. of Environmental Protection	D	P	*	P	*	P	D	P	*	P	CC	
MORRIS, Carole South Florida Water Management District	-	-	-	-	-	-	-	P	P	P	P	
TAYLOR, Norman Broward County Office of Economic Development	P	P	P	A	P	P	*	P	P	P	A	

P = Present

A = Absent

D = Designee Present

* = Excused Absence

- = Not Yet Appointed

CC = Via Conference Call

** Please note – July & August Meetings Executive Committee Only

Rick Scott
GOVERNOR



Doug Darling
EXECUTIVE DIRECTOR

December 8, 2011

James Murley
Interim Executive Director
South Florida Regional Planning Council
3440 Hollywood Blvd, Ste 140
Hollywood, FL 33021

SFRPC
DEC 12 2011

Dear James,

Thank you for your time and effort on 29 November 2011 at the first statewide stakeholders' meeting to create Florida's 5-year economic development strategic plan. The session at Collaborative Labs was a great success. Together, we made strides toward developing recommendations for 2017 vision and goals for Florida's economy, and prioritizing possible economic development strategies.

While considerable progress was made, there remains much work to do. The next phase of this strategic planning effort will involve regional engagement meetings from January through March 2012 to gather additional input from the public, local communities, and regional entities. The Department of Economic Opportunity will take the lead in organizing these meetings.

I applaud all you have accomplished so far. Your continued support is critical to the success of this plan. Please encourage your colleagues to get involved in this important effort by visiting www.floridajobs.org.

Sincerest thanks,

Doug Darling
Executive Director

cc: Gray Swoope, Secretary of Commerce
and President, Enterprise Florida, Inc.

Division of Strategic Business Development

The Capitol, Suite 1902 | 400 S. Monroe Street | Tallahassee, Florida 32399-4120
850.487.2568 | TTY/TDD 1-800-955-8771 | Voice 1-800-955-8770 | FloridaJobs.org

An equal opportunity employer/program. Auxiliary aids and services are available upon request to individuals with disabilities. All voice telephone numbers on this document may be reached by persons using TTY/TDD equipment via the Florida Relay Service at 711.



GOREN, CHEROF, DOODY & EZROL, P.A.

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SHANA H. BRIDGEMAN
STACEY R. WEINGER
MATTHEW I. REMM

STEVEN L. JOSIAS, OF COUNSEL

PLEASE REPLY TO FORT LAUDERDALE

December 13, 2011

SFRPC
DEC 14 2011

VIA REGULAR MAIL AND EMAIL

Suzanne Gunzburger, Chair
South Florida Regional Planning Council
3440 Hollywood Boulevard, Suite 140
Hollywood, FL 33021

RE: South Florida Regional Planning Council ("SFRPC") / Attorney General Opinion 2011-26

Madame Chair and Members of the Council:

On December 9, 2011, the Attorney General's Office issued Attorney General Opinion 2011-26 ("the AGO"), in response to the October 17, 2011 request submitted by the General Counsel's Office at the direction of the SFRPC. A copy of the AGO is attached for your review.

As you know, the General Counsel's Office asked the Attorney General to clarify whether the SFRPC was a "unit of government" for purposes of Section 215.425, F.S. This provision, which was recently amended, expressly limits severance and bonus payments for individuals employed by units of government. You may recall that we sought clarification from the Attorney General's Office in the context of negotiating the executive director employment agreement with James F. Murley.

Please be advised that the Attorney General's Office has determined that **the SFRPC is a unit of government** for purposes of Section 215.425, F.S. Therefore, the SFRPC **may not** enter into an employment agreement (or renew or renegotiate an existing agreement) which contains a severance provision that provides for more than twenty (20) weeks of severance compensation. Please note that Mr. Murley's employment agreement provides for three (3) months of severance

payment compensation in the event of termination and, therefore, **does not** conflict with Section 215.425, F.S.

Thank you for your consideration. Please contact our office if there is any additional information that we can provide.

Sincerely,



SAMUEL S. GOREN
General Counsel

SSG/JGH

CC: James F. Murley, Executive Director

H:\820098.SFRPCLETTERS 2011\Letters 2011\Ltr. to SFRPC re AGO Request.docx



STATE OF FLORIDA

**PAM BONDI
ATTORNEY GENERAL**

December 9, 2011

11-26

Mr. Samuel S. Goren
Mr. Jacob G. Horowitz
Attorneys for the South Florida
Regional Planning Council
3099 East Commercial Boulevard
Fort Lauderdale, Florida 33308

Dear Messrs. Goren and Horowitz:

On behalf of the South Florida Regional Planning Council, you have asked for my opinion on substantially the following question:

Is the South Florida Regional Planning Council considered a "unit of government" as that phrase is used in section 215.425, Florida Statutes, as amended by Chapter 2011-143, Laws of Florida, for the purpose of determining severance payments for its employees?

In sum:

The South Florida Regional Planning Council is a "unit of government" for purposes of section 215.425, Florida Statutes, as amended by Chapter 2011-143, Laws of Florida, for determining severance payments for its employees.

You advise that the South Florida Regional Planning Council is currently negotiating an employment agreement with a prospective executive director and is seeking guidance regarding whether the regional planning council is subject to section 215.425(4)(a), Florida Statutes.

The South Florida Regional Planning Council was created pursuant to the "Florida Regional Planning Council Act," sections 186.501 - 186.513, Florida Statutes. The act authorizes the creation of regional planning councils in each of the several comprehensive planning districts of the state in order to effectively carry out a wide variety of federal and state program designations and to avoid a proliferation of

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Page Two

overlapping, duplicating, and competing agencies.¹ The comprehensive planning districts are geographic areas within the state designated by the Executive Office of the Governor.²

The purpose of the act is

to establish a common system of regional planning councils for areawide coordination and related cooperative activities of federal, state, and local governments; ensure a broad-based regional organization that can provide a truly regional perspective; and enhance the ability and opportunity of local governments to resolve issues and problems transcending their individual boundaries.³

As provided in the act, regional planning councils serve as the primary organizations to address problems and plan solutions that are of concern on more than a local level and it is through the regional planning councils that local governments may provide input into state policy development.⁴ While the councils do not act as a permitting or regulatory entity, they are recognized as the multipurpose regional entity that is in a position to plan for and coordinate intergovernmental solutions to growth-related problems on greater-than-local issues, provide technical assistance to local governments, and meet other needs of the communities in each region.⁵

In order to accomplish these legislatively prescribed goals, regional planning councils have been given a number of specifically enumerated powers, including the power to enter into contracts and agreements; to sue and be sued in their own names; to accept funds, grants, and services from governmental or private sources; to adopt rules; and to participate with other organizations, public and private, in the coordination or conduct of their activities.⁶ Regional planning councils are authorized by section 186.505, Florida Statutes, to employ and compensate personnel, consultants, and technical and professional assistants as are determined to be necessary to perform the duties set forth in the act.⁷ Such councils constitute "agencies" for purposes of

¹ See s. 186.502(1)(c), Fla. Stat.

² See s. 186.503(1), Fla. Stat.

³ Section 186.502(2), Fla. Stat.

⁴ Section 186.502(3), Fla. Stat.

⁵ See s. 186.502(4), Fla. Stat.

⁶ See s. 186.505, Fla. Stat.

⁷ Section 186.505(4), Fla. Stat.

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Page Three

Chapter 120, Florida Statutes, the "Administrative Procedures Act."⁸

Regional planning councils must prepare and submit to the Executive Office of the Governor a proposed comprehensive regional policy plan, addressing significant regional resources, infrastructure needs, or other important issues within the region as well as specifying regional issues that may be used in reviewing a development of regional impact.⁹ This regional policy plan contains regional goals and policies regarding growth management and must be consistent with the adopted state comprehensive plan.¹⁰ The Executive Office of the Governor arbitrates disputes between or among the regional planning councils.¹¹

While Florida courts have not addressed the issue of regional planning councils as "units of government," they have considered the nature of regional planning councils and determined that board members are officers for purpose of Florida's Resign-to-Run Law and the constitutional dual office-holding prohibition. In *Orange County v. Gillespie*,¹² the court considered a regional planning council established under former Chapter 160, Florida Statutes.¹³ The court considered whether a voting member of the East Central Florida Regional Planning Council was a "public officer" within the meaning of Florida's Resign-to-Run Law, which required elected or appointed public officials to resign from office before seeking another public office. While it was argued that the council acted in an advisory capacity, the court held that the regional planning councils had been delegated and possessed the powers and attributes of sovereignty.

Thus, the court held that members of such councils constituted public officers for purposes of the resign-to-run law at that time applicable to state, county, or municipal offices.¹⁴ The court concluded that the member was ineligible to qualify as a candidate for the office of state representative in the primary prior to resigning from the planning council. Likewise, this office has, for purposes of dual office-holding considerations,

⁸ See s. 120.52(1), Fla. Stat., defining "Agency" for purposes of Ch. 120, Fla. Stat., the Administrative Procedure Act, to mean, among others, those entities described in s. 186.504, Fla. Stat.

⁹ Section 186.508(1), Fla. Stat.

¹⁰ Section 186.507(1), Fla. Stat.

¹¹ See s. 186.506(1), Fla. Stat.

¹² 239 So. 2d 132 (Fla. 4th DCA 1970), *cert. denied*, 239 So. 2d 825 (Fla. 1970).

¹³ See now ss. 186.501-186.513, Fla. Stat.

¹⁴ See s. 99.012, Fla. Stat. (1971), stating in subsection (2) that "[n]o individual may qualify as a candidate for public office who holds another elective or appointive office, whether state, county, or municipal, the term of which or any part thereof runs concurrently with the term of office for which he seeks to qualify without resigning from such office" Section 99.012(2) was subsequently amended and now refers to district offices in addition to federal, state, county, and municipal offices; however, at the time the court reached its opinion in *Orange County v. Gillespie*, *supra*, the statute did not refer to district offices.

determined that membership on a regional planning council constitutes an office within the meaning of Article II, section 5(a), Florida Constitution, Florida's dual office-holding prohibition.¹⁵

Section 215.425, Florida Statutes, prohibits extra compensation payments in the absence of a policy or contract. Subsection (1) of the statute, as amended by section 1, Chapter 2011-143, Laws of Florida, provides that:

No extra compensation shall be made to any officer, agent, employee, or contractor after the service has been rendered or the contract made; nor shall any money be appropriated or paid on any claim the subject matter of which has not been provided for by preexisting laws, unless such compensation or claim is allowed by a law enacted by two-thirds of the members elected to each house of the Legislature. However, when adopting salary schedules for a fiscal year, a district school board or community college district board of trustees may apply the schedule for payment of all services rendered subsequent to July 1 of that fiscal year.

The statute was amended during the 2011 legislative session to authorize certain limited types of extra compensation¹⁶ and to require that any policy, ordinance, rule or resolution crafted to implement a bonus scheme meet certain legislatively prescribed standards:

- (3) Any policy, ordinance, rule, or resolution designed to implement a bonus scheme must:
 - (a) Base the award of a bonus on work performance;
 - (b) Describe the performance standards and evaluation process by which a bonus will be awarded;
 - (c) Notify all employees of the policy, ordinance, rule, or resolution before the beginning of the evaluation period on which a bonus will be based;
 - and
 - (d) Consider all employees for the bonus.¹⁷

¹⁵ See Op. Att'y Gen. Fla. 01-28 (2001).

¹⁶ See s. 1(2), Ch. 2011-143, Laws of Fla.

This section does not apply to:

- (a) A bonus or severance pay that is paid wholly from nontax revenues and nonstate-appropriated funds, the payment and receipt of which does not otherwise violate part III of chapter 112, and which is paid to an officer, agent, employee, or contractor of a public hospital that is operated by a county or a special district; or
- (b) A clothing and maintenance allowance given to plainclothes deputies pursuant to s. 30.49.

¹⁷ Section 215.425(3), Fla. Stat.

Mr. Samuel S. Goren
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Page Five

You specifically inquire about subsection (4) which requires in subparagraph (a), that after July 1, 2011:

a unit of government that enters into a contract or employment agreement, or renewal or renegotiation of an existing contract or employment agreement, that contains a provision for severance pay with an officer, agent, employee, or contractor must include the following provisions in the contract:

1. A requirement that severance pay provided may not exceed an amount greater than 20 weeks of compensation.
2. A prohibition of provision of severance pay when the officer, agent, employee, or contractor has been fired for misconduct, as defined in s. 443.036(29), by the unit of government.¹⁸

The phrase "unit of government" as it is used in section 215.425, Florida Statutes, is not defined. In the absence of a statutory definition, the plain and ordinary meaning of a word can be ascertained, if necessary by reference to a dictionary.¹⁹ The word "government" is commonly defined as "the political direction and control exercised over the actions of the members, citizens, or inhabitants of communities, societies, and states; direction of the affairs of a state, community, etc.; political administration[;]"²⁰ or "[a] system by which a political unit is governed[;] [a] governing body or organization."²¹ A "unit" is defined as "one of a number of things, organizations, etc., identical or equivalent in function or form[;]" and "[o]ne regarded as a constituent part of a whole" or "[a] part, device, or module that performs a particular function."²² Thus, a "unit of government" would appear to be a governing body or organization that constitutes a part of the political administration of this state.

Regional planning councils are the primary organizations in this state addressing intergovernmental planning problems and providing solutions and technical assistance. These planning councils act on behalf of the state in implementing state policies

¹⁸ Further, any agreement or contract, executed on or after July 1, 2011, which involves extra compensation between a unit of government and an officer, agent, employee, or contractor may not include provisions that limit the ability of any party to the agreement or contract to discuss the agreement or contract pursuant to section 215.425(5), Fla. Stat.

¹⁹ See *Green v. State*, 604 So. 2d 471, 473 (Fla. 1992); *Plante v. Department of Business and Professional Regulation*, 685 So. 2d 886, 887 (Fla. 4th DCA 1996), *WFTV, Inc. v. Wilken*, 675 So. 2d 674 (Fla. 4th DCA 1996); *State v. Cohen*, 696 So. 2d 435 (Fla. 4th DCA 1997).

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²¹ The American Heritage Dictionary (office ed. 1987), p. 303.

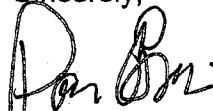
²² Webster's New Universal Unabridged Dictionary 2003, p. 2074; The American Heritage Dictionary (office ed. 1987), p. 741.

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Mr. Jacob G. Horowitz
Page Six

relating to growth management. Regional planning councils are statutorily authorized and regulated entities responsible for formulating regional planning processes. Board members or planning councils are subject to the Florida's Resign-to-Run Law and the dual office-holding prohibition.²³ Thus, it would appear that regional planning councils created pursuant to the "Florida Regional Planning Council Act" are a part of the political administration of this state and would constitute "units of government" for purposes of section 215.425, Florida Statutes, as amended by Chapter 2011-143, Laws of Florida.

In sum, it is my opinion that the South Florida Regional Planning Council is a "unit of government" as that phrase is used in section 215.425, Florida Statutes, as amended by Chapter 2011-143, Laws of Florida, for the purpose of determining severance payments for its employees.

Sincerely,



Pam Bondi
Attorney General

PB/tgh

²³ See Art. II, s. 5(a), Fla. Const., providing a dual office-holding prohibition and s. 99.012, Fla. Stat., for resign-to-run requirements.

Mr. Samuel S. Goren
Mr. Jacob G. Horowitz
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RE: REGIONAL PLANNING COUNCILS – PUBLIC EMPLOYEE
COMPENSATION – EXTRA COMPENSATION – UNITS OF
GOVERNMENT – whether regional planning council is "unit of
government" for purposes of providing severance pay for officers and
employees of council. s. 215.425, Fla. Stat., as amended by Ch. 2011-
143, Laws of Fla.