

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney



SUBJECT: PSTA Appointment

DISTRIBUTION: Jewel White, Chief Assistant County Attorney
Mark S. Woodard, County Administrator


DATE: September 2, 2015

The Board will soon be appointing a non-elected citizen to the PSTA governing body. In 2012, the Board appointed Brian Scott, whose term expires September 30, 2015. A question has been raised as to Mr. Scott's qualifications to hold office under the terms of the PSTA's Special Act. This question was raised in 2012 when the Board first appointed him to the PSTA. I am attaching for your reference a copy of my October 16, 2012 memo to the Board, together with the minutes of the discussion held that day.

I am also attaching for your reference a memo prepared by PSTA legal counsel regarding whether a PSTA board member would have to resign her/his position if her/his employer wishes to submit a bid in response to a solicitation issued by PSTA. I understand this was written to provide guidance in the event Mr. Scott's company chooses to bid on trolley service the PSTA will contract for in 2016.

JLB:sme
Attachments

TO: The Honorable Chairman and Members of the
Board of County Commissioners

FROM: James L. Bennett, County Attorney 

SUBJECT: PSTA Appointment of Brian Scott

DISTRIBUTION: Robert S. LaSala, County Administrator
Jewel White, Managing Assistant County Attorney

DATE: October 16, 2012

RECOMMENDATION: It is recommended that the Board of County Commissioners ("Board") discuss the following information and decide whether to stand by your appointment of Mr. Scott or reconsider that decision in light of the following background.

BACKGROUND: After appointing Mr. Brian Scott to be its appointee to the PSTA Board, this office was directed to have discussions with Mr. Scott and with PSTA legal counsel in order to confirm his qualifications for holding PSTA Board membership. Those discussions have been held and I am advising you of the following findings.

Of concern with Mr. Scott's appointment to PSTA is the fact that among other transportation related businesses, he operates a charter bus business out of Pinellas County. Operating or having a relationship with an operator of a charter service originating in Pinellas County is one of the specifically enumerated "public transit" operations that would disallow membership on PSTA. [See Section 2-342(6) and 2-343(b), attached.] Mr. Scott points out that the definition of "operator" under the PSTA special act includes a list of exceptions the last of which could be interpreted to be inconsistent with the charter service prohibition. The last phrase of the exemptions allows "a person furnishing transportation solely for his or its employees or customers." [See 2.342(9), attached.] The specifically enumerated charter service prohibition could be interpreted as being negated by this exception. The special act is then ambiguous and such ambiguities are generally required to be interpreted in context of the whole special act. Such an interpretation would require narrowing the interpretation of the last phrase of the exemptions in order to support the prohibition of an operator of a charter service. Legal counsel for the PSTA agrees with this approach.

Therefore, if the Board chooses to take such an interpretation and narrow the language of the exception, Mr. Scott does not qualify for PSTA membership. A broad reading of the last phrase of the exemption would allow his membership. Legal counsel for PSTA tells us that they do not question the qualifications of appointments to the PSTA and will work with Mr. Scott to avoid any conflicts of interest.

A copy of the relevant provisions in the PSTA Special Act is attached for your consideration.

JLB:sme

Attachment

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Excerpts from the Special Act – Pinellas Suncoast Transit Authority

Sec. 2-342. - Definitions

As used in this division and unless the content clearly indicates otherwise:

.....

(6) *Public transit* means transportation of passengers for hire by means, without limitation, of a street railway, elevated railway, subway, motor vehicles, buses or other means of conveyance operating as a common carrier within the public transit area as provided, and charter service originating therein.

...

(9) *Operator* means any person engaged or seeking to engage in the business of providing public transit, but does not include persons engaged primarily in the transportation of children to or from school, in operating taxicabs, in operating buses, limousines, or other means for the transportation of passengers between a common carrier terminal station and a hotel or motel, in operating a common carrier railroad, or a person furnishing transportation solely for his or its employees or customers.

Sec. 2-343. - Created; membership, term of office, qualifications, officers; quorum; executive director and employees; compensation of members.

.....

(b) Each appointed member of the authority shall be a person who is a freeholder and qualified elector of the county with an outstanding reputation for civic pride, interest, integrity, responsibility and business ability. No person who is an officer or employee of any city or of the county in any capacity, except elected officials, shall be an appointed member of the authority. Further, no member shall have any private financial interest, directly or indirectly, in any contract, work, or business of the authority or any public transit system subject to regulation by the authority; or be in the employ of or hold any stock, bond, investment, or other financial interest or private business relationship to any operator of a public transit system in the area.

October 30, 2012
Meeting Minutes – Item #26

Board appointment of Brian Scott to the Pinellas Suncoast Transit Authority (PSTA) discussed; Board indicated a consensus to stand by its previous action.

County Attorney James L. Bennett indicated that following its appointment of Brian Scott to the PSTA Board in September of this year, the Board had directed his office to explore concerns raised regarding Mr. Scott's qualifications to hold PSTA membership.

Referring to his memorandum dated October 16, 2012, a copy of which has been filed and made a part of the record, Attorney Bennett related that Managing Assistant County Attorney Jewel White had spoken with Mr. Scott and determined that he is an operator of 18a charter bus service in Pinellas County, which is a prohibition or disqualifying characteristic for membership under Section 2-342(6) of the PST A Special Act. He indicated that Section 2-342(9) of the Act contains an exception for "a person furnishing transportation solely for his or its employees or customers"; and that the Board has the option of interpreting the wording narrowly or broadly, as outlined in his memorandum.

Attorney Bennett related that he has spoken with PSTA Counsel Alan Zimmet, who indicated that the Special Act is poorly drafted and an interpretation is needed; that there is no doubt that Mr. Scott has a related background and would lend credible service to the Board; and that should the commissioners choose a broad reading of the exception, he would work with Mr. Scott to avoid any conflicts of interest; whereupon, Commissioner Seel indicated that she supports a broad reading of the exception and moved that the members stand by their previous decision.

Noting that he also supports the appointment of Mr. Scott, Commissioner Welch related that he did not return phone calls from Mr. Scott due to Sunshine Law concerns; whereupon, he questioned the difference between the current discussion and the decision to waive statutory requirements pertaining to the appointment of Mr. Longenecker to the Tourist Development Council under Agenda Item No. 24. Chief Assistant County Attorney Dennis R. Long, with input by Attorney Bennett, related that the waiver provision is governed by general law, whereas the PSTA appointment is controlled by a Special Act; that there is no waiver provision under the Special Act; and that the Board is free to interpret the exemption broadly and therefore determine that Mr. Scott is qualified, as a charter service provides transportation to its customers.

Commissioner Roche indicated that he had spoken at length with Mr. Scott regarding the appointment, which he does not consider a Sunshine issue; that Mr. Scott had addressed all of his concerns regarding past, current, or future conflicts; and that he is satisfied with Mr. Scott's commitment to the improvement of mass transit and the growth, development, and redevelopment of the county. Chairman Morroni stated that he has also spoken with Mr. Scott and feels comfortable with his appointment to the PSTA Board and, hearing no objection, declared that the appointment of Mr. Scott will stand.

Thereupon, Chairman Morroni reiterated the need for establishment of an appointment policy, indicating that the matter will be revisited at a December work session.