

June 16, 2023

BY EMAIL

William Clague, Esq.
County Attorney's Office
Manatee County
Manatee County Administration Building
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Re: Manatee Clerk of Court

Dear Mr. Clague:

The purpose of this letter is to clarify my letter of February 13, 2023 to the Manatee Clerk of the Court and Comptroller requesting our opinion as to whether a "PCard" expenditure made by a county staff employee on behalf of an individual County Commissioner was for a public purpose and considered an authorized expenditure. You have expressed concern over our discussion of the definition and elements of the term "public purpose." In discussing a lack of an express constitutional or statutory definition of "public purpose," I cited the Florida Supreme Court's holding that "[i]f the [public entity] has used either its taxing power or pledge of credit to support issuance of bonds, the purpose of the obligation must serve a paramount public purpose and any benefits to a private party must be incidental." *Miccosukee Tribe of Indians of Florida v. South Florida Water Management District*, 48 So. 3d 811 (Fla. 2010) (citing *State v. JEA*, 789 So. 2d 268, 272 (Fla. 2001), and *State v. Osceola County*, 752 So. 2d 530, 536 (Fla. 1999)); cf. *Poe v. Hillsborough County*, 695 So. 2d 672, 676-77 (Fla. 1997) ("[I]f an undertaking is for public purposes, Article IX, § 10 of the Constitution is not violated even though some private parties may be incidentally benefited.").

You pointed out that *Miccosukee Tribe* also states, "If the [public entity] has not exercised its taxing power or pledged its credit to support the bond obligation, the obligation is valid if it serves a public purpose." *See id.* at 272. It then holds that in the case before it, the contracts "do not contemplate a pledge of the [public

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entity's] credit, and that only a public purpose, not a paramount public purpose, need be shown." *Id.*

I offered the citation to *Miccosukee Tribe* as an example in a discussion showing there is not a single, general definition of "public purpose," but that it has been formulated differently in different cases and is case-specific. I did not mean to imply that the taxing power or pledge of credit to support issuance of bonds was in question in the matters addressed in my letter. It is true that where a "public purpose" is involved in the absence of bond or tax pledge support, the public purpose need not be "paramount" in comparison with private benefits. But, of course, a "public purpose" is still required.

I agree that the standard applicable to the facts related to our opinion does not involve a finding of "paramount public purpose" but rather the more general "public purpose" standard. In the letter I did not mean to imply bonds or tax pledges had set the standard in this instance. However, I was simply unable to conclude that the use of public funds (payment of the particular "PCard" expenses with county funds) met this general "public purpose" requirement. Clerk Colonnese's use of our opinion in her audit is not dispositive of the issue as our conclusion can certainly be disputed both in response to the audit as well as judicially if the County feels her finding is incorrect.

You also objected to our characterization of the subject expenditure as "wasteful of taxpayers dollars" as a gratuitous statement of policy not ours to make. That objection is valid inasmuch as the statement is neither a legal conclusion nor a premise upon which a legal conclusion depends.

Thank you for your reaching out to discuss this matter.

Sincerely,



John K. Londot
For the Firm

JKL/mh