


**OFFICE OF GENERAL COUNSEL  
CITY OF JACKSONVILLE  
117 W. DUVAL STREET  
SUITE 480  
JACKSONVILLE, FL 32202**

**MEMORANDUM**

**TO:** Honorable Council Member Matt Carlucci  
**FROM:** Jason R. Teal, Deputy General Counsel   
**CC:** Jason R. Gabriel, General Counsel  
**DATE:** May 10, 2021  
**RE:** Local Option Gas Tax Limitations on Use

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**I. QUESTIONS ASKED**

- A. Are projects that may be funded through a local option gas tax ("LOGT") pursuant to section 336.025, Florida Statutes limited to roadways and their ancillary components or is the definition of a "transportation expenditure" in that section broader?
- B. If more than just roadway projects can be funded using LOGT proceeds, can those monies be used to fund the City's proposed Emerald Trail project?

**II. SHORT ANSWER**

- A. Yes. The Florida Legislature intentionally used multiple phrases in section 336.025, F.S. to describe the types of projects within the definition of "transportation expenditures", including both "public transportation" and "roadway". Because neither term is defined in that section, a review of how those words are used in other statutes and information derived from the statutes reveals the Legislature intended the term "public transportation" to be broader than just roadway projects,
- B. Yes. Florida Statutes pertaining to Florida Department of Transportation's ("FDOT") development of the state highway system requires FDOT to incorporate bicycle and pedestrian ways into state, regional and local transportation plans and programs, and those facilities may be established either as part of roadway systems or they may be separate. FDOT's regulations specifically authorize shared use paths, which are paved facilities physically separated from motorized traffic that may be located in their own independent rights-of-ways unassociated with a roadway. The Emerald Trail would be considered a

shared use path and therefore, would be part of the transportation facility. LOGT funds could be used to fund the Emerald Trail.

### III. DISCUSSION

A question has been raised concerning the City's options for use of the local option gas tax ("LOGT") currently under consideration by the City Council. Specifically, the question focuses on whether the LOGT proceeds may be used to fund projects that are not necessarily associated with a traditional roadway system but may nonetheless qualify as a "transportation facility".

It is unquestionable that LOGT funds may be applied to streets and facilities associated with streets, but the question addressed in this memorandum is whether it only applies to streets or whether other types of public transportation facilities may exist and be eligible for funding pursuant to a LOGT. If so, can LOGT monies be used to fund the proposed Emerald Trail – a 9-14 ft. wide multi-modal pathway system envisioned to connect the City's historical urban neighborhoods with parks, schools, restaurants and shopping facilities through pedestrian, bicycle, micromobility device and motorized scooter access?

As with any statutory interpretation analysis, a review of the language used in the statute is a necessary first step. The availability of a LOGT is authorized in Section 336.025, F.S. (adopting by reference sections 206.41(1)(e) and 206.87(1)(c), F.S.), which specifies the manner a LOGT is levied and specifies the manner that proceeds raised through a LOGT can be spent by a local government. Preliminarily, however, it is important to note that section 336.025 has been placed under Florida Statutes, Title XXXVI, entitled "Public Transportation" and in Chapter 336, entitled "County Road System." At various places in the statutes, the Legislature distinguishes "transportation systems" from "road systems". The actual title of section 336.025, F.S. is "County transportation system; levy of local option fuel tax on motor fuel and diesel fuel."

According to section 336.025, LOGT proceeds can only be used for "transportation expenditures." See §§336.025(1)(a)2 and 336.025(1)(b)3, F. S. Transportation expenditures is defined in section 336.025(7), F.S. to include the following programs:

- (a) Public transportation operations and maintenance.
- (b) Roadway and right-of-way maintenance and equipment and structures used primarily for the storage and maintenance of such equipment.
- (c) Roadway and right-of-way drainage.
- (d) Street lighting installation, operation, maintenance, and repair.
- (e) Traffic signs, traffic engineering, signalization, and pavement markings, installation, operation, maintenance, and repair.
- (f) Bridge maintenance and operation.
- (g) Debt service and current expenditures for transportation capital projects in the foregoing program areas, including construction or reconstruction of roads and sidewalks.

Subsection (7)(a) authorizes expenditures on "public transportation" versus subsections (7)(b) and (7)(c)'s authority to use LOGT funds on "roadways". As such, the Florida Legislature intended there to be a distinction between public transportation and public roadways. Neither term is

defined in section 336.025; however, section 336.01, F.S. references back to the definitions in section 334.03, F.S. In that section, a "transportation facility" is defined as:

**any means for the transportation of people or property from place to place** which is constructed, operated, or maintained in whole or in part from public funds. The term includes the property or property rights, both real and personal, which have been or may be established by public bodies for the transportation of people or property from place to place.

Additionally, a "transportation corridor" means

any land area designated by the state, a county, or a municipality which is between two geographic points and **which area is used or suitable for the movement of people and goods by one or more modes of transportation**, including areas necessary for management of access and securing applicable approvals and permits. Transportation corridors shall contain, but are not limited to, the following:

- (a) Existing publicly owned rights-of-way;

\* \* \*

(Emphasis added). A "right-of-way" is defined as "land in which the state, the department, a county, or a municipality owns the fee or has an easement devoted to or required for use as a transportation facility." None of those terms limits the method of movement of people or property to vehicles or access confined to roadways.

A "road" is defined as:

a way open to travel by the public, including, but not limited to, a street, highway, or alley. The term includes associated sidewalks, the roadbed, the right-of-way, and all culverts, drains, sluices, ditches, water storage areas, waterways, embankments, slopes, retaining walls, bridges, tunnels, and viaducts necessary for the maintenance of travel and all ferries used in connection therewith.

The definition of road includes all components of the roadway feature, including its supporting components. It is clear from these definitions that a "road" is a part of a "transportation facility"; but it is also clear that a transportation facility is not limited to just roads.

Further clarity can be gleaned from other portions of the statutes where transportation facilities regulations have been expressed. Section 335.065(1)(a), F.S. requires full consideration be given to "[b]icycle and pedestrian ways . . . in the planning and development of transportation facilities, including the incorporation of such ways into state, regional, and local transportation plans and programs." Additionally, section 335.065(2), F.S. requires the Florida Department of Transportation ("FDOT") to "establish construction standards and a uniform system of signing for bicycle and pedestrian ways." Finally, section 335.065(3), F.S. provides, "For the purposes of this section, **bicycle facilities may be established as part of or separate from the actual roadway** and may utilize existing road rights-of-way or other rights-of-way or easements acquired for public use." (Emphasis added).

Partly in response to section 335.065(2), F.S., FDOT prepared its "Roadway Design Plans Preparation Manual" which includes Chapter 8 – Pedestrian, Bicycle and Public Transit Facilities." In subsection 8.6, "Shared Use Paths" are authorized as part of FDOT's Roadway Design Plans. A Shared Use Path is defined in subsection 8.6 as:

**paved facilities physically separated from motorized vehicular traffic by an open space or barrier and either within the highway right of way or an independent right of way.** Shared use paths are used by bicyclists, pedestrians, skaters, runners and others. Since shared use paths serve as pedestrian facilities, they are required to be accessible. In addition to the requirements of this manual for accessible pedestrian facilities, the bicycle's operating characteristics will govern the design of shared use paths. The term path as used in this section refers to these paved shared use paths.

(Emphasis added). The remainder of subsection 8.6 is devoted to design and construction standards for appropriately building shared use paths and pedestrian facilities.

Additionally, chapter 349, F.S., which is the statute specifically establishing the Jacksonville Transportation Authority, is helpful in this determination. In section 349.02(1), F.S.,

[t]ransportation facilities" means and includes all mobile and fixed assets (real or personal property or rights therein) **used in the transportation of persons or property by any means of conveyance whatsoever**, and all appurtenances thereto, such as, but not limited to, highways; limited or controlled access lanes and facilities; docks, vessels, vehicles, fixed guideway facilities, **and any means of conveyance of persons or property of all types**; park-and-ride facilities; transit-related improvements adjacent to transit facilities or stations; bus, train, vessel, or other vehicle storage, cleaning, fueling, control, and maintenance facilities; and administrative and other office space for the exercise by the authority of the powers and obligations herein granted.

(Emphasis added). And section 349.04(1)(c), F.S. provides,

The [JTA] may further plan, coordinate, and recommend to appropriate officers and agencies of federal, state, and local governments methods and facilities for the parking of vehicles, the movement of pedestrians, and vehicular traffic (including bicycles), public and private, in Duval County **to accomplish a coordinated transportation system for the greater Jacksonville area.** The authority may construct and operate passenger terminals for the parking of automobiles and movement by public conveyance of persons **and construct and operate all other facilities necessary to a complete and coordinated transportation system in the Jacksonville area.**

(Emphasis added). Nothing in either provision (or anywhere else in the statute) limits transportation facilities or systems to vehicular traffic in roadway-type environs.

Finally, the Transportation Element adopted in the City's 2030 Comprehensive Plan encourages the use of shared use/multi-use paths. *See* Transportation Element, Goal 4. The Capital Improvements Element adopted in the City's 2030 Comprehensive Plan includes all segments of the Emerald Trail as capital improvement projects for the City to undertake. *See* Jacksonville Ordinance 2020-175, "FY 2020-2024 Capital Improvements Element (CIE) Schedule." And the City's currently-existing LOGT, adopted by the City Council in 2016, includes as part of its Project List, "Mobility and transit accessibility enhancements within ¼ mile of transit corridors" which includes construction of sidewalks and bicycle enhancements up to ¼ mile away from the transit corridor.

#### **IV. CONCLUSION**

Given the lack of specific definitions in section 336.025, F.S. and judicial guidance interpreting the section, statutory interpretation principles may be used to glean an understanding of the Legislature's intent for the types of projects that may be funded using proceeds from a LOGT. The important consideration is the use of the words "public transportation" and "roadway" as separate and distinct types of projects allowed in section 336.025(7). This implies a legislative intent that "transportation expenditures" may be spent on other types of transportation projects than just a street or road. Legislation pertaining to FDOT, as well as FDOT's policy and guidance documents prepared in response to the legislation, make clear that multi-modal transportation facilities such as shared use paths are identified as also being components of a "complete and coordinated" public transportation system. Therefore, these types of facilities, of which the Emerald Trail is one, may be appropriately funded pursuant to section 336.025, F.S. through a local option gas tax.