



CITY OF PORT ST. LUCIE  
OFFICE OF THE CITY ATTORNEY

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July 13, 2023

Honorable Cathy Townsend, Chair  
Honorable Linda Bartz, Vice Chair  
Honorable Chris Dzadoovsky, Commissioner  
Honorable Larry Leet, Commissioner  
Honorable Jamie Fowler, Commissioner  
St. Lucie County Board of County Commissioners  
300 Virginia Avenue  
Fort Pierce, Florida 34982

Re: Florida PACE Funding Agency operating in St. Lucie County

Honorable Commissioners of St. Lucie County:

It has recently come to my attention that the Florida PACE Funding Agency (hereinafter, "Florida PACE") is providing financing to property owners within St. Lucie County, with the majority of such properties being within the jurisdictional boundaries of the City of Port St. Lucie. While it is understood that PACE programs are authorized by Florida Statute, it has become apparent that Florida PACE is not following the statutory requirements for PACE financing and is doing so through significant and serious misrepresentations to property owners.

Because this has only recently been discovered by the City, my office has not had the opportunity to bring this matter for discussion at a public meeting with the City Council. However, I was informed that the County Commission would be discussing this topic and I wanted to let you know that my office: (1) has become aware of Florida PACE's operation, (2) is extremely concerned with the business practices being used by Florida PACE, (3) will be discussing with the City Council the consumer protection implications; (4) will be discussing with the City Council any possible civil, criminal, and/or legislative remedies which the City could pursue, and (5) will be seeking direction regarding the protection of property owners within the City of Port St. Lucie.<sup>1/</sup>

Florida PACE takes the unusual and legally indefensible position that two local government entities (in this case, a county and a city) can enter into an interlocal agreement, and somehow create an entity with statewide power. Not only does it claim this statewide authority,

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<sup>1</sup> In addition, my office will be closely monitoring the pending litigation against Florida PACE by Palm Beach County and Pinellas County, as well as the actions under consideration by other jurisdictions.

it makes the claim that it is a “statewide local government”.<sup>2/</sup> Such a position is legally unsupported. A local government entity only has authority within its jurisdictional boundaries or within an area where extra-territorial authority is granted by the State, and the jurisdiction of a local government entity cannot be expanded *ipse dixit*. Additionally, the Florida Interlocal Cooperation Act makes it clear that government entities, joining in an interlocal agreement, can only share the power they already possess with the other signatories to the interlocal agreement. A local government cannot give or create what it does not already possess.

Florida PACE has repeatedly asserted its “statewide local government” status as being affirmed by the Circuit Court in Leon County. The proceeding upon which it relies, however, is a bond validation proceeding. The Florida Interlocal Cooperation Act provides that if a separate entity is created by an interlocal agreement, and that entity seeks to validate a bond, it shall do so only in Leon County. However, the Act also requires notice of the judicial action to be published in Leon County and any other County where the entity is operating. In the case of Florida PACE, it published notice of its bond validation proceeding in Leon, Flagler, and Osceola Counties – and nowhere else. That was a logical choice, because its combined authority only exists within the jurisdictional boundaries of Flagler County and the City of Kissimmee – and nowhere else.

Where Florida PACE errs is in claiming that the judgment of this bond validation confers some binding authority over the rest of the State as well. Any judgment of the Leon County Circuit Court cannot be said to be binding outside of the jurisdictions which were subject to the proceeding – namely, Flagler County and the City of Kissimmee (Osceola County). No one outside of those jurisdictions were given notice of the judicial proceeding which Florida PACE now attempts to rely upon as binding. This is a very basic premise of due process – individuals cannot be bound by a judicial proceeding of which they were never given notice and an opportunity to be heard. Accordingly, Florida PACE’s assertion that its bond validation judgment binds every individual and entity statewide is entirely specious.

Notwithstanding the personal jurisdiction problem of the Leon County case, the bond validation judgment exceeded its scope nonetheless. The role of the Court in a bond validation hearing is limited and well established. Specifically, the Court must find: “(1) whether the public body has authority to issue the subject bonds; (2) whether the purpose of the obligation is legal; and (3) whether bond issuance complies with the requirements of law.” *Fla. Bankers Ass’n v. Fla. Dev. Finance*, 176 So.3d 1258, 1265 (Fla. 2015). Florida PACE’s assertion that the Leon County Circuit Court could grant it statewide operation as a “local government” is blatantly incorrect. A Circuit Court cannot “create” a local government entity – or any government entity whatsoever.<sup>3/</sup>

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<sup>2</sup> Florida PACE maintains this claim of being a “local government” because, pursuant to the Florida PACE Statute, only a local government can place a PACE Assessment on real property. Therefore, Florida PACE maintains that it is both statewide and local simultaneously.

<sup>3</sup> If a court had such authority, which it does not, it certainly would not be within the confines of a bond validation proceeding.

Government entities are created by Statute or Constitution only, and Florida PACE's assertion to the contrary is simply wrong.

Additionally, the Florida Supreme Court in the *Florida Bankers* case made it absolutely clear that a PACE agency does not possess the authority to assess real property itself, but that an interlocal agreement between the PACE agency and the local government with proper jurisdiction is the required method authorized by law for such an assessment. [*Id. at 1267-68*]. Florida PACE's attempt to circumvent the clear language of Florida Statute, as well as the reasoned judgment of the Florida Supreme Court, by unilaterally "declaring" itself a local government entity is in derogation of Florida law.

It is concerning that two local government entities, namely Flagler County and the City of Kissimmee, have jointly taken the position that they can create extra-territorial jurisdiction allowing them to place an assessment on any real property throughout the entire State of Florida; however, that is exactly what they have done. I will be advising my Council Members how the City of Port St. Lucie can protect and defend its lawfully established jurisdictional authority, while protecting the consumer rights and property rights of those who own real property within the City. My office will continue to confer with the County Attorney and will make itself available to assist in any way possible in this matter.

Thank you for your attention to this matter and I look forward to the City, the County, and the Tax Collector working together for the protection of our citizens.

Respectfully Submitted,



JAMES D. STOKES

City Attorney

Board Certified Specialist:

- *City, County & Local Government Law*
- *Labor & Employment Law*

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Honorable Shannon Martin, Mayor  
Honorable Jolien Caraballo, Vice Mayor  
Honorable Stephanie Morgan, Council Member  
Honorable David Pickett, Council Member  
Honorable Anthony Bonna, Council Member  
Honorable Chris Craft, Tax Collector, St. Lucie County  
Mr. Jesus Merejo, City Manager, City of Port St. Lucie  
Mr. George Landry, County Administrator, St. Lucie County  
Mr. Dan McIntyre, County Attorney, St. Lucie County  
Mr. Ed Becht, General Counsel, St. Lucie County Tax Collector