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Gina Peebles, Asst. County Manager
Chief of Staff and ISOB Liaison
Alachua County Manager's Office
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via email only

Re: ISOB Question

Dear Gina:

At your request, I have researched an issue identified by the Infrastructure Oversight Board and offer the following analysis.

Issue: May municipalities invest their share of the proceeds of the 2023 surtax in interest-bearing certificates of deposit?

Short Answer: Only if – at a minimum – the instrument is the type explicitly allowed by Section 218.415, Florida Statutes [Local Government investment policies] and/or other statutory guardrails for public deposit; the municipality complies with the extensive procedural and management requirements of this statute for investments of surplus public funds; and, the surtax proceeds are in fact “surplus” funds.

Discussion: In 1977, the Florida Legislature created the “Investment of Local Government Surplus Funds Act” sections 218.40-.422, Florida Statutes, to “promote, through state assistance, the maximization of net interest earnings on invested surplus funds of local units of government, thereby reducing the need for imposing additional taxes.” In 2000, the Legislature substantially revised the statute to provide uniform guidelines in investing the surplus funds of all government agencies.

Caveat: It is beyond the scope of the ISOB to advise municipalities on their accounting and investment policies, strategy, or specific public funds deposit mechanisms they wish to use for surplus funds. In short, the ISOB is not charged with or equipped to provide services of a fiduciary or financial advisor to municipalities in Alachua County. This memorandum is provided to the ISOB for general informational purposes only, is not investment advice, and nothing stated in this memorandum may be relied on by third parties outside the ISOB or by individual ISOB members when acting in their official

municipal roles. It is strongly recommended that municipalities seek the professional advice of their legal counsel and financial officers.

General Background: A local government may adopt a written investment policy consistent with the guidelines in Section 218.415 et seq. and “ ‘may by resolution invest and reinvest any surplus public funds in their control or possession’ in any of several listed types of funds and securities.” Maloy v. Seminole County, 264 So.3d 370 (Fla. 5th DCA 2019). If a local government decides to not adopt a written investment policy, the statute provides for a default set of statutory guidelines the local government must follow when investing surplus funds. Surplus funds are those public monies “not immediately required to meet (the local government’s) current expenses.” Id.

Section 218.415 states in pertinent part that the overarching legislative intent is to have investment policies “structured to place the highest priority on the safety of principal and liquidity of the funds. The optimization of investment returns shall be secondary to the requirements for safety and liquidity.”

It appears that the type of certificate of deposit bears on the municipality’s analysis:

Section 280.02, Florida Statutes (Definitions) sets forth in pertinent part --

“Public Deposits” means, in this case, the “moneys of the ...metropolitan government or municipality...which are placed on deposit in a bank, credit union, savings bank or savings association. This includes but is not limited to, time deposit accounts, demand deposit accounts, and **nonnegotiable certificates of deposit...**”

Section 280.03 **prohibits** the deposit of public funds “directly or indirectly **in negotiable certificates of deposit.**”

Note: In the event a municipality lawfully invests surplus surtax proceeds, any interest earned on the invested funds must follow the principal (i.e. surtax). AGO 2000-32 (Transportation, Interest Earned on Investments); AGO 94-39 (Interest that Accrues on Impact Fee Accounts); AGO 2000-37 (Interest on Municipal Fuel Tax Fund, Uses).

In short, interest earned must be expended on qualifying projects under the Alachua County 2023 Surtax Ordinance, implementing Resolution and governing statute.

Sincerely,

/s/ PATRICE BOYES, ESQ.

Patrice Boyes, Esq.